



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: March 4, 2009 REPORT NO: 09-007

ATTENTION: Budget and Finance Committee  
Agenda of March 11, 2009

SUBJECT: Annual Living Wage Ordinance Report for Fiscal Year 2008

REFERENCE: Living Wage Ordinance: San Diego Municipal Code Chapter 2, Article 2,  
Division 42; and  
Report No. 07-144, Living Wage Administration during Fiscal Year 2007

REQUESTED ACTION: Accept report.

STAFF RECOMMENDATION: Accept report.

BACKGROUND:

This annual report describes administration of the Living Wage Ordinance [LWO] during Fiscal Year 2008 (July 1, 2007 – June 30, 2008). The LWO, adopted by Council in June 2005 and effective beginning July 1, 2006, requires employers to compensate employees who perform work on applicable service contracts under a predetermined wage structure. This report is the second annual report of LWO activity.

For reference, text of the Living Wage Ordinance is attached to this report (see Attachment A, *San Diego Municipal Code Chapter 2, Article 2, Division 42*). A one-page synopsis is also included to provide a convenient summary of the applicability, exemptions, and requirements of the LWO (see Attachment B, *Living Wage Ordinance Synopsis*).

The LWO was modified by a unanimous vote of the City Council on October 20, 2008, however, this report and reference materials supplied herein reflect terms of the LWO in place during the subject reporting period of Fiscal Year 2008.

LWO PROGRAM ADMINISTRATION DURING FY 2008

Purchasing & Contracting Department is responsible to administer the LWO program. Through Fiscal Year 2008, duties were handled by a Supervising Management Analyst dedicated half-time (0.50 FTE) to this assignment. During July 2008, a Senior Management Analyst was hired to assist full-time (1.0 FTE). This additional position brings a specific background in finance and human resources along with bilingual abilities and a commitment to program goals. The

increased staff level has already resulted in proactive efforts to assist contractors with understanding and meeting their obligations, development of comprehensive office procedures, initiation of compliance audits, and a more rapid, structured response to LWO Employee Complaints.

#### Rules Implementing the Living Wage Ordinance

In accordance with San Diego Municipal Code §22.4235(a), *Rules Implementing the Living Wage Ordinance* are posted on Purchasing & Contracting Department's Vendor Information web page. These *Rules* provide clarity and ensure consistency, with sections on applicability, exemptions, employer requirements, recordkeeping and reports, monitoring and investigation, enforcement, and an employee complaint process.

Appendices to the *Rules Implementing the Living Wage Ordinance* include:

- Current Living Wage Rates;
- LWO *Notice to Employees* (English, Spanish);
- LWO *Certification of Compliance* form;
- LWO *Application for Exemption* form; and
- LWO *Employee Complaint Form* (English, Spanish).

The *Rules Implementing the Living Wage Ordinance* and all notices and forms are available at [http://www.sandiego.gov/purchasing/pdf/lwo\\_rules.pdf](http://www.sandiego.gov/purchasing/pdf/lwo_rules.pdf) and are included with this report (see Attachment C).

#### LWO Contracts

The LWO applies on service contracts with a term of more than 90 days and an annual value over \$25,000. For the City, primary services include landscaping, janitorial, security, and laundry services. A full list of all LWO contracts during Fiscal Year 2008, *LWO Contracts in Fiscal Year 2008 (July 1, 2007 – June 30, 2008)*, is attached to this report (see Attachment D).

In Fiscal Year 2008, four contractors requested and received an exemption from LWO requirements in accordance with SDMC §22.4215(b)(1) because their firms employed twelve or fewer employees:

Chart 1: LWO EXEMPT EMPLOYERS IN FISCAL YEAR 2008	
<u>Vendor Name</u>	<u>Vendor Name</u>
Claude W. Thedford DBA Epic Pest Control	JL Krueger Landscape
Goldkamp Landscaping	VIP Holdings

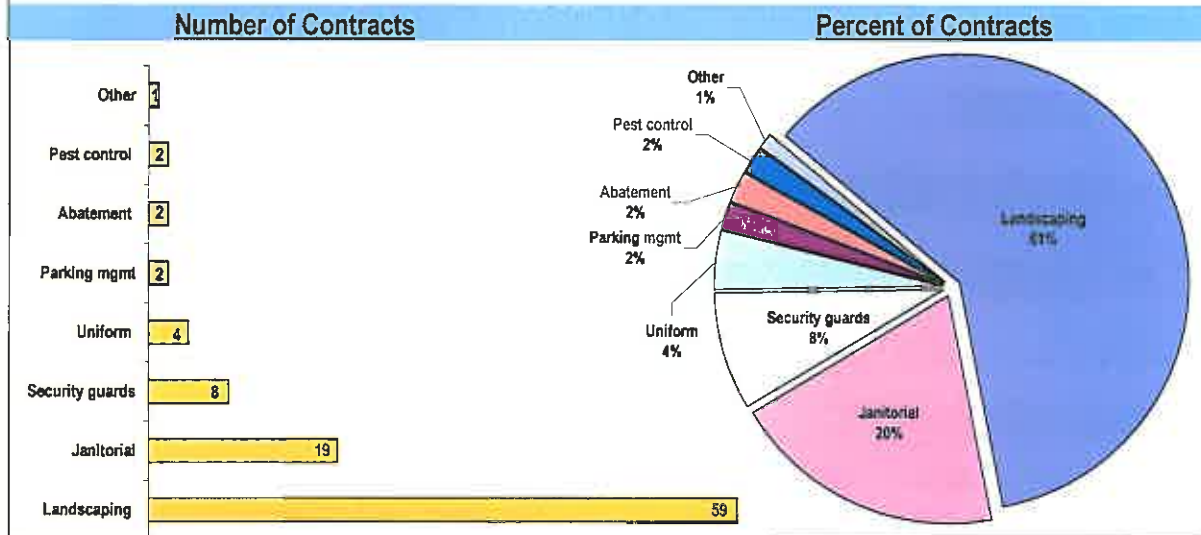
During this reporting period, 40 contractors worked on 97 active LWO contracts for a total value of \$29,640,142. (NOTE: This amount reflects the total contract value which may span portions of several years.) The following chart lists LWO covered contractors:

Chart 2: LWO COVERED EMPLOYERS IN FISCAL YEAR 2008

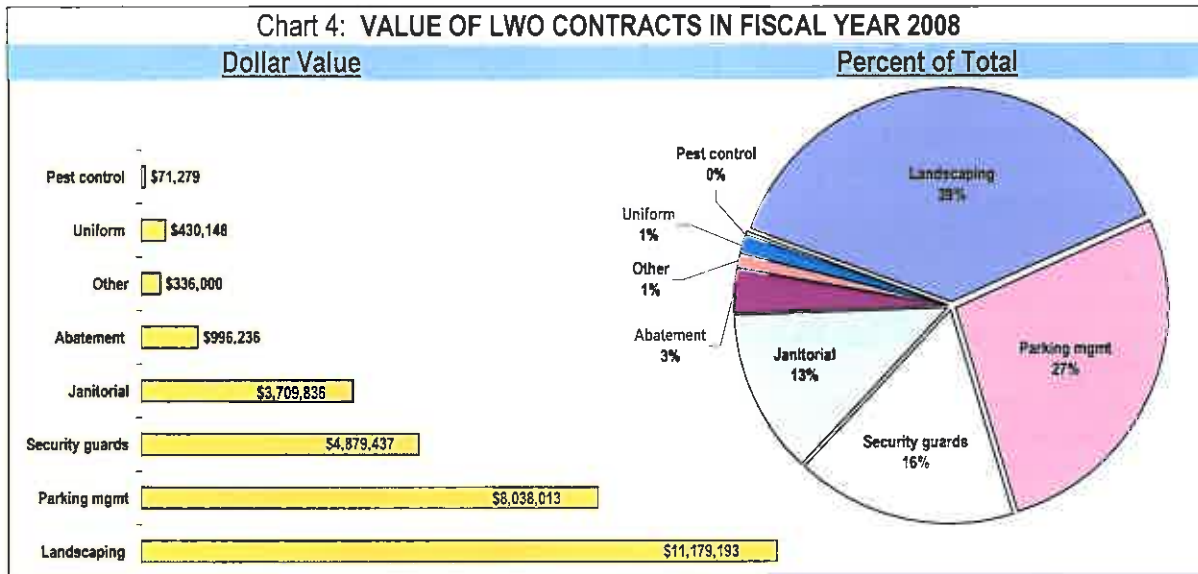
Vendor Name	Vendor Name
Able Patrol and Guard	One Tripp Tree Service
Acacia Landscape Company	Parkwest Landscape Maintenance
Ace Parking Management, Inc	Ponderosa Landscape, Inc
Agricultural Pest Control	Powerland Equipment, Inc
Ameripride Uniform Services	Prudential Overall Supply
Atlas Environmental Services Inc	Qualityway Building Maintenance
Aztec Landscaping, Inc	Ron's Maintenance
Benchmark Landscape Services Inc	San Diego Services
Blue Skies Landscape Maintenance Inc	Stafford Environmental Services Inc
Brewer Lawn Maintenance, Inc	T and T Janitorial
Building Trust Services, Inc DBA Pro Window	TEG-LVI Environmental Services Inc.
Cleaning Co	The Wackenhut Corp
Contemporary Design Landscape	Tobi Jene Carter DBA
Empire Maintenance Company, Inc	Treebeard Landscape, Inc
Flores Sierra Contractors, Inc	Trugreen - Landcare Regional
Great Scott Tree Service, Inc	TTCC, Inc
Harrison Organization, Inc	Unifirst Corporation
Jani-King of California, Inc	United Pacific Services, Inc
Landscapes USA, Inc	West Coast Arborists, Inc
Natures Image, Inc	Westturf Landscape Maintenance
NMS Management, Inc	

Of the 97 active LWO contracts during this period, more than 61% were for landscaping-type services, 20% were for janitorial services, and 8% were for security guard services. The remaining contracts were for uniform services, parking management services, pest control, lead and asbestos abatement, and other services.

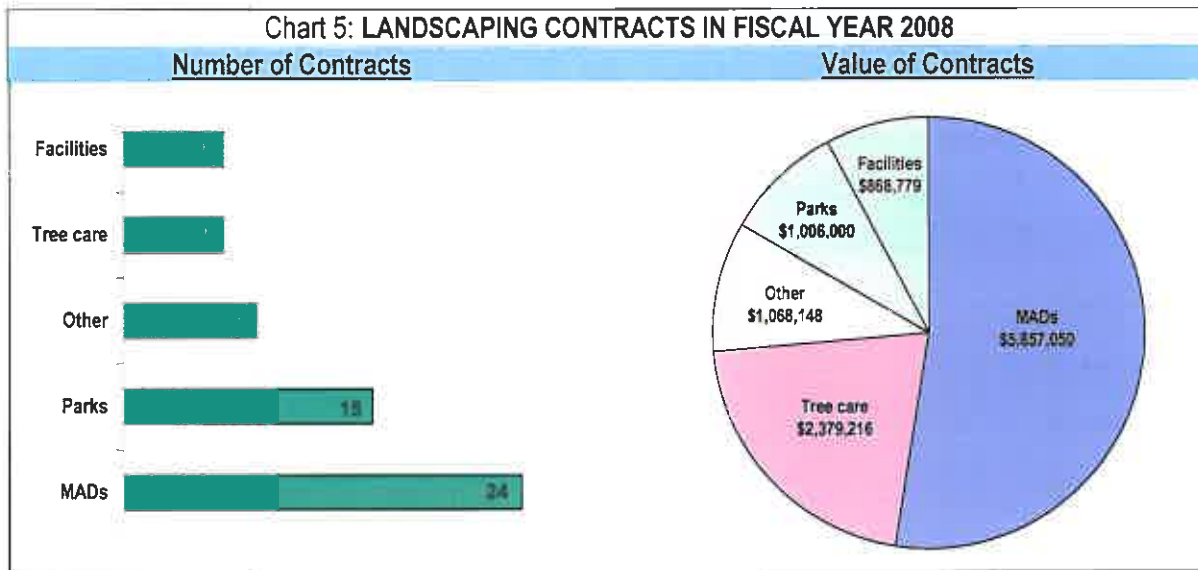
Chart 3: NUMBER OF LWO CONTRACTS IN FISCAL YEAR 2008



When calculated by dollar value: landscaping composes 39% of the total contract value; parking management, 27%; security guards, 16%; janitorial, 13%; and all others compose the remaining 5%. The value of the Purchasing Agreements for these contracts totaled \$29,640,142.



Landscaping service – with the most contracts (59) and highest total (\$11,179,173) – is the largest commodity requiring LWO compliance. As such, this data merits further examination:



### City Facility Agreements

Commencing on July 1, 2007, LWO requirements became applicable to contracts and subcontracts at City facilities, in accordance with SDMC §22.4210(a)(4). These City facilities include Petco Park, Qualcomm Stadium, San Diego Sports Arena, San Diego Convention Center

and San Diego City Concourse.

In July 2008, Purchasing & Contracting Department sent correspondence to each City facility to provide notice of their obligations regarding LWO requirements, request a signed *LWO Certification of Compliance*, and offer assistance. Throughout the year, contacts have been established and maintained to support City facilities in understanding and attaining LWO compliance.

#### LWO Annual Wage Adjustment

San Diego Municipal Code §22.4220(b) stipulates an upward adjustment of hourly wage rates and health benefits rates to take effect on July 1 of each year. New rates are calculated based on the regional Consumer Price Index (for All Urban Consumers for the San Diego – Carlsbad – San Marcos Metropolitan Statistical Area for the twelve-month period preceding December 31). These new rates are posted on Purchasing & Contracting Department's website along with updated forms and other documents to reflect the new rates. Procurement Specialists work with contractors and the responsible departments to ensure applicable City contracts reflect payment of new rates to covered workers.

The following chart shows LWO wage and health benefit rates since inception of the LWO:

Chart 6: CITY OF SAN DIEGO LIVING WAGE RATES			
	Effective Dates	Cash Wage + Health Benefits	Full Cash Wage
FY 2009	July 1, 2008 – June 30, 2009	\$10.58 + \$2.12 per hour in Health Benefits	\$12.70 per hour
FY 2008*	July 1, 2007 – June 30, 2008	\$10.34 + \$2.07 per hour in Health Benefits	\$12.41 per hour
FY 2007	July 1, 2006 – June 30, 2007	\$10.00 + \$2.00 per hour in Health Benefits	\$12.00 per hour

\* Fiscal Year 2008 is the subject of this report.

The following chart compares annual earnings for various wage rates (assuming 40 hours of work for 52 weeks) for the duration of the LWO in San Diego:

Chart 7: COMPARISON OF ANNUAL EARNINGS FOR VARIOUS WAGE RATES		
Type of Wages	Fiscal Year 2007	Fiscal Year 2008
Minimum wage	@ \$ 7.50/hr = \$15,600	@ \$ 8.00/hr = \$16,640
Living Wage with paid health benefits	@ \$10.00/hr = \$20,800	@ \$10.34/hr = \$21,507
Living Wage in full cash payment	@ \$12.00/hr = \$24,960	@ \$12.41/hr = \$25,813

#### LWO Employee Complaints

In the initial year of LWO implementation, issues were raised and successfully addressed to preclude filing of any formal complaints. During Fiscal Year 2008, seven LWO Employee Complaints were received and investigated. The following chart lists information regarding these complaints while retaining confidentiality of the complainants and the subjects of the complaints:

Chart 8: LWO EMPLOYEE COMPLAINTS IN FISCAL YEAR 2008		
Complaint	Issue	Resolution
#C08-001	Employees claimed non-payment of LWO rates.	Violation. CA Superior Court awarded \$45,500 to affected employees.
#C08-002	Employee not given option to receive full cash pay instead of health insurance.	No violation. It's the employer's choice whether to provide health insurance or pay in full cash.
#C08-003	Employee claimed non-payment of LWO rates.	No violation. Collective bargaining agreement in place to supersede LWO.
#C08-004	Employee claimed non-payment of LWO rates.	No violation. Collective bargaining agreement in place to supersede LWO.
#C08-005	Employee claimed termination in retaliation for requesting payment of LWO rates.	Violation. Employee re-instated and paid \$4,914.36 in lost wages.
#C08-006	Employee claimed non-payment of LWO rates.	No violation. Collective bargaining agreement in place to supersede LWO.
#C08-007	Employee claimed non-payment of LWO rates.	Violation. Employee paid \$2,426.85 in back wages.

The stated performance measure for the LWO program is to resolve LWO Employee Complaints within a target of 90 days. Total duration time consists of complaint receipt and issuance of correspondence acknowledging receipt to the complainant and the subject of the complaint; investigation, including contract file review and interviews with complainant, subject of complaint, responsible department contract administrator, and Procurement Specialist; finding of violation or non-violation; calculation of back pay, if owed; and verification of payment, if any.

According to the *Rules Implementing the LWO* and LWO administrative procedures, the complainant and the subject of the complaint are notified of the status of the investigation whenever a complaint is not resolved within 60 days; additional status updates are provided every 30 days until the investigation is completed.

Chart 9: LWO EMPLOYEE COMPLAINT RESOLUTION TIME IN FISCAL YEAR 2008				
Complaint	Filed	Concluded	Duration	Comments
#C08-001	07-24-2007	07-25-2008	366 days	Involved CA Superior Court litigation.
#C08-002	08-03-2007	08-14-2007	11 days	
#C08-003	09-23-2007	10-29-2007	36 days	Involved legal representation.
#C08-004	09-24-2007	10-29-2007	35 days	
#C08-005	10-19-2007	10-06-2008	352 days	
#C08-006	10-31-2007	11-28-2007	28 days	Included time to verify payment.
#C08-007	04-25-2008	08-18-2008	115 days	
Average length of time to conclude Complaint:			943 days	/ 7 Complaints = 134.7 days average
Average time when no attorneys involved:			225 days	/ 5 Complaints = 45.0 days average

Five complaints were investigated and resolved within an average timeframe of 45 days. Two other complaints, filed during public comment at Council meetings, involved more complicated research and involvement by the City Attorney's Office. Resolution of these LWO Employee Complaints required approximately a year each and resulted in award of payment to employees.

### LWO Audits

San Diego Municipal Code §22.4235(a) allows for periodic reviews to be conducted to verify compliance with LWO requirements; the City's right to full access to the work site for interviews and to examine records is affirmed in the *Rules*, Section F, Monitoring and Investigation. During Fiscal Year 2008, LWO audit procedures were developed. Performance of LWO compliance audits were scheduled to occur when the new Senior Management Analyst staff position was filled. Progress will be detailed in the Fiscal Year 2009 report.

LWO compliance audits include the following components:

- *Selection* – Contracts for audits are selected randomly or based on allegations of non-compliance; selection of a firm for audit does not imply wrong-doing.
- *Notification* – Employers receive a formal letter stating the intent to conduct an audit on the subject contract. Every effort is made to schedule activities at dates and times convenient to all parties.
- *Examination of records* – Payroll records and project files are reviewed to determine compliance with LWO wage, health benefit, and leave requirements.
- *Employee interviews* – Interviews are conducted with covered employees in a time-efficient, confidential manner. Interviewer will be fluent in English and Spanish.
- *Results* – Employers receive a formal letter stating audit conclusions. If an employer has not complied with LWO requirements, the City, in consultation with the City Attorney's Office, may pursue remedies available through the current Living Wage Ordinance.

FISCAL CONSIDERATIONS: During the first year, LWO applied as contracts were "awarded, amended, renewed, or extended," allowing a gradual phase-in of its application. Now, in the second year of LWO implementation, living wage rates apply to all City service contracts. An increase in costs was anticipated while contractors extended remuneration from minimum wage without benefits to full living wage rates plus health care benefits and compensated time off. For the foreseeable future, the cost for labor in City service contracts will rise with the regional cost-of-living, as set by the annual adjustment required in SDMC §22.4220(b).

The Annual LWO Report for FY2007 did not attempt to capture service contract costs because the phase-in, by definition, pertained only to a portion of the year. For Fiscal Year 2008, a total LWO contract amount of \$29,640,142 is cited, but this value comes with two footnotes: 1) each contract's total value may reflect services during more than one fiscal year; and 2) some

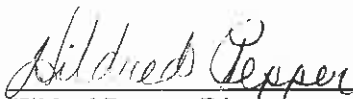
contracts, particularly janitorial contracts, have been extended on a month-to-month basis while undergoing a Business Process Re-engineering (BPR) review for possible consolidation. Additionally, whenever a contract is re-bid, its scope is subject to modification. All of these issues make a highly accurate year-to-year comparison elusive, however, an annual total can serve as a primary benchmark.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None regarding this report.

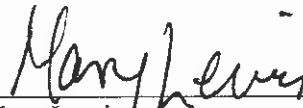
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Purchasing & Contracting Department's web page includes the text of the Ordinance, *Rules Implementing the Living Wage Ordinance*, all forms and notices, and contact information. In recognition of the strong contributions made by a bilingual workforce in covered service contracts, both the LWO *Notice to Employees* and the LWO *Employee Complaint Form* are available in Spanish, as well as English. Also, the Department presents frequent public workshops, "How to Do Business with the City," and material regarding LWO requirements is included. LWO handouts are available in Purchasing & Contracting Department's lobby.

The Center on Policy Initiatives, a lead proponent for passage of the LWO, remains active and interested in the progress of its administration; they have received lists of LWO contracts and submitted a Public Records Act request for detailed information on exemptions.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders for the LWO are employees and employers who are covered by the Ordinance and the residents of the City of San Diego. SDMC §22.4201 expressly states, "Paying service employees a living wage is intended to improve the quality of services provided to the City and to the public by reducing high turnover, absenteeism, and instability in the workplace. This division also promotes the City's policies and programs that seek to meet the employment and economic development needs of the City and its workforce."



Hildred Pepper, Director  
Purchasing & Contracting Department



Mary Lewis  
Chief Financial Officer

- Attachment A: San Diego Municipal Code Chapter 2, Article 2, Division 42
- Attachment B: Living Wage Ordinance Synopsis
- Attachment C: Rules Implementing the Living Wage Ordinance
- Attachment D: LWO Contracts in Fiscal Year 2008 (July 1, 2007 – June 30, 2008)

## Article 2: Administrative Code

### Division 42: City of San Diego Living Wage Ordinance (Added 06/06/2005 by O-19386 N.S.)

#### § 22.4201 Purpose and Intent

The *City* awards many taxpayer-funded agreements to private *businesses* that provide *services* to the public and to the *City* or that are intended to promote economic development, job creation, and retention. The *City* also owns, operates, manages, or leases sports, entertainment, or convention facilities and contracts with *businesses* to use these facilities or provide services at these locations to the public. It is the experience of the *City* that many of these services to the public and to the *City* are provided by workers who live at or below the poverty line. This division provides that when agreements, including *service contracts*, *financial assistance agreements*, and *City facilities agreements* are extended by the *City* to private *businesses* these taxpayer funded benefits are used in a way that advances the interests of the *City* as a whole, by creating jobs that keep workers and their families out of poverty. This division therefore requires *covered employers* and their subcontractors to pay their employees a wage that will enable a full-time worker to meet basic needs and avoid economic hardship. Paying service employees a living wage is intended to improve the quality of services provided to the *City* and to the public by reducing high turnover, absenteeism, and instability in the workplace. This division also promotes the *City's* policies and programs that seek to meet the employment and economic development needs of the *City* and its workforce. Private businesses that do not fall into any of the above described categories are not required to comply with this division.

(Added 6-6-2005 by O-19386 N.S.)

#### §22.4202 Citation

This division shall be cited as the City of San Diego Living Wage Ordinance.

(Added 6-6-2005 by O-19386 N.S.)

#### §22.4205 Definitions

Each word or phrase that is defined in this division appears in the text of this division in italicized letters. For purposes of this division, the following definitions shall apply:

*Business* means any corporation, partnership, limited liability corporation, joint venture, sole proprietorship, association, or trust, other than a public entity.

Ch.	Art.	Div.
2	2	42

*City* means the City of San Diego, its organizational subdivisions, agencies, offices, or boards, but does not include independent agencies, such as the Housing Authority, Redevelopment Agency, and the Retirement Board, each of which is encouraged to adopt its own living wage policy.

*City facility* means any of the following facilities that are owned, operated, managed, or leased by the *City*:

- (a) Petco Park;
- (b) Qualcomm Stadium;
- (c) San Diego Sports Arena;
- (d) San Diego Convention Center; or
- (e) San Diego City Concourse.

*City facility agreement* means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in annual gross receipts to the *business*. *City facility agreement* includes (a) subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year; and (b) subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days.

*City facility employer* means any *business* that has entered into a *City facility agreement*. For the purposes of this division, *City facility employer* includes any sublessee, subcontractor, or concessionaire that retains employees to provide *services* at a *City facility*.

*City Manager* means the City Manager and his/her delegates and representatives.

*Covered employee* means any individual employed on a full-time, part-time, temporary, or seasonal basis by (a) a *service contractor* with regard to any hours worked in performance of a *service contract*; (b) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*; or (c) a *City facility employer* with regard to any hours worked at a *City facility*. *Covered employee* does not include: (a) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution; and (b) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education.

*Covered employer* means any *service contractor*, *financial assistance recipient*, or *City facility employer*.

*Financial assistance agreement* means an agreement between the *City* and a *business* to provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a) economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. As to economic development, job creation, or job retention, this division shall apply to *financial assistance agreements* with a combined value over a period of five years of \$500,000 or more. As to tourism, arts, and cultural programs, this division shall apply to *financial assistance agreements* with a combined annual value of \$750,000 or more. Direct financial assistance includes funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

*Financial assistance recipient* means any *business* that has entered into a *financial assistance agreement*. For the purposes of this division, *financial assistance recipient* includes all subcontractors retained by a *business* to perform *services* at the site that is the subject of the *financial assistance agreement*, or for the program that is the subject of the *financial assistance agreement*.

*Health benefits rate* means a minimum dollar amount per hour toward the cost of health and medical care insurance for employees and their dependents.

*Service contract* means a contract between the *City* and a *business* with a combined annual value of payments in excess of \$25,000 and with a term of more than 90 days, and any applicable subcontracts or franchises, to furnish *services*.

*Service contractor* means any *business* that has been awarded a *service contract* subject to this division. For the purposes of this division, *service contractor* includes all subcontractors or franchisees retained by a *business* to perform any or all of the functions covered by a *service contract*.

*Services* means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

- (a) Automotive repair and maintenance;
  - (b) Cashiers;
  - (c) Child care;
  - (d) Concessions/retail sales;
  - (e) Facility and building maintenance;
  - (f) On-site food service/preparation;
  - (g) Janitorial, custodial, and housekeeping;
  - (h) Landscaping;
  - (i) Laundry services;
  - (j) Office/clerical;
  - (k) Parking services;
  - (l) Pest control;
  - (m) Security services;
  - (n) Ushers and wheelchair attendants;
  - (o) Ticket takers; and
  - (p) Warehouse workers.
- (Added 6-6-2005 by O-19386 N.S.)

## §22.4210 Applicability of Living Wage Ordinance

- (a) This division shall apply to:
  - (1) any *service contract*, including any applicable subcontract, entered into, awarded, amended, renewed, or extended on or after July 1, 2006. Compliance with this division is required during the term of the *service contract*. Notwithstanding the foregoing, *service contracts* for child care services are exempt from the requirements of this division until July 1, 2008.

- (2) any *financial assistance agreement* subject to the \$500,000 threshold, including any applicable subcontract, entered into, awarded, amended, renewed, or extended on or after July 1, 2006. Compliance with this division is required for a period of five years after the threshold amount has been received by the *business*.
- (3) any *financial assistance agreement* subject to the \$750,000 threshold, including any applicable subcontract entered into, awarded, amended, renewed, or extended on or after July 1, 2007. Compliance is required for one year after the threshold amount has been received by the *business*.
- (4) any *City facility agreement*, including any applicable sublease, subcontract, or concession agreement in effect on July 1, 2007. Compliance with this division is required during the term of the *City facility agreement*.
- (b) *Service contracts, financial assistance agreements, and City facility agreements* shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the requirements of this division.

(Added 6-6-2005 by O-19386 N.S.)

#### §22.4215 Exemptions.

- (a) Except for *City facility agreements*, the following contracts are exempt from the requirements of this division:
  - (1) contracts subject to federal or state law or regulations that preclude the applicability of this division's requirements;
  - (2) contracts that involve programs where the *City* shares management authority with other jurisdictions, unless all the signatory jurisdictions agree to the applicability of this division's requirements to the contract;
  - (3) contracts for *services* by any other governmental agency;
  - (4) contracts for public works construction, recycling, or solid waste management franchises;
  - (5) cooperative procurement contracts, including contracts that use a bidding process that substantially complies with *City* requirements;

- (6) contracts for the purchase of goods, property, or the leasing of property;
  - (7) contracts for design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services.
  - (8) contracts where compliance with this division is not in the best interests of the City as certified by the *City Manager* and approved by the *City Council*.
- (b) The following businesses, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this division:
- (1) *Businesses*, including their parent and subsidiary entities, employing twelve or fewer employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, so long as the *City* determines that the *business*, including any of its subcontractors, will not need to retain more than twelve employees to perform work related to a *service contract*, *financial assistance agreement*, or *City facility agreement*.
  - (2) *Businesses* organized under Internal Revenue Service Code, section 501(c)(3) to provide community-based social services, other than child care services, and whose highest paid officer earns a salary that, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee.

(Added 6-6-2005 by O-19386 N.S.)

#### **§22.4220 Payment of Living Wage and Provision of Benefits**

- (a) *Covered employers* subject to this division shall pay *covered employees* a wage of no less than \$10.00 per hour if the *health benefits rate* is paid, or no less than \$12.00 per hour if the *health benefits rate* is not paid. The *health benefits rate* is \$2.00 per hour. The rates are effective beginning July 1, 2006.
- (b) Beginning July 1, 2007, the hourly wage rates and *health benefits rate* shall be upwardly adjusted each July 1 to reflect the change in the Consumer Price Index for All Urban Consumers for the San Diego – Carlsbad – San Marcos Metropolitan Statistical Area for the twelve-month period preceding December 31. Prior to April 1 of each year, the *City* shall calculate the new rates and provide notice to all *covered employers* by posting on the *City's* web site the rates in effect for the next fiscal year.

- (c) *Covered employers* shall provide to each *covered employee* a minimum of ten compensated days off per year for sick leave, vacation, or personal necessity leave at the *covered employee's* request. Such days off shall vest as accrued. Part-time employees shall accrue such days at a rate proportional to full-time employees. *Covered employees* shall be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier. Paid holidays that are provided under established employer policy shall not be counted toward the provision of the ten compensated days off.
- (d) *Covered employers* shall also permit *covered employees* to take an additional ten uncompensated days off per year to be used for sick leave for the illness of the *covered employee* or a member of his or her immediate family, where the *covered employee* has exhausted all accrued compensated days off. This section does not mandate the accrual from year to year of uncompensated days off.  
(Added 6-6-2005 by O-19386 N.S.)

#### §22.4225 Reporting and Notification Requirements

- (a) Every *service contract*, *financial assistance agreement*, and *City facility agreement* shall require that the party contracting with the *City* be subject to the terms of this division and all regulations and rules promulgated under this division and that all applicable subcontractors, sublessees, and concessionaires comply with the terms of this division and all regulations and rules promulgated under this division.
- (b) Each *covered employer* shall notify its *covered employees* of the requirements of this division and of the possible availability of the Earned Income Tax Credit.
- (c) Each *covered employer* shall file a living wage certification with the *City Manager* within thirty days of becoming a *covered employer*. *Covered employers* must ensure that all applicable subcontractors, sublessees, and concessionaires file a living wage certification within thirty days of becoming covered by the requirements of this division. The living wage certification shall be completed on a form provided by the *City Manager*.
- (d) Each *covered employer* shall file with the *City Manager* an annual report regarding compliance with this division.  
(Added 6-6-2005 by O-19386 N.S.)

**§22.4230 Enforcement**

- (a) A *covered employee* claiming a violation of this division shall have the right to file an action against an employer in the appropriate court within one year after discovery of the alleged violation. The court may award any employee who files suit pursuant to this subdivision, the following:
  - (1) For failure to pay the minimum wage required by this division, the difference between the minimum wage required herein and the amount actually paid to the employee, plus interest.
  - (2) For failure to pay the *health benefits rate*, the difference between the *health benefits rate* required by this division and the amount actually paid towards the *health benefits rate*, plus interest.
  - (3) For retaliation for exercise of any rights provided for under this division, reinstatement, back pay, or any other relief that a court may deem appropriate.
  - (4) For a willful violation of this division, a court may award as a penalty up to treble the amount of monies to be paid as damages.
  - (5) The court may award reasonable attorney's fees and costs to an employee who prevails in any such private action and to an employer who so prevails if the employee's suit is found to be frivolous.
- (b) A *business* is prohibited from any retaliation against an employee who alleges non-compliance with this division. Any such employee may report any alleged retaliation to the *City Manager*.
- (c) A *covered employee* claiming a violation of the division may file a complaint with the *City*. The *City* may, in its sole discretion, investigate and address any alleged violation of this division's requirements. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions of this division shall not create any right of action or right to recover damages from the *City* by any person, including but not limited to an aggrieved employee.
- (d) The *City* has the discretion to terminate the *service contract*, *financial assistance agreement*, or *City facility agreement* and pursue any other legal remedies available to the *City*, including debarment, if the *covered employer* fails to comply with this division.
- (e) A violation of this division shall not be prosecuted as a misdemeanor, notwithstanding any other provision of the San Diego Municipal Code.

- (f) This division shall not be construed to limit an employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this division be a prerequisite to the assertion of any other such right.

*(Added 6-6-2005 by O-19386 N.S.)*

**§22.4235 Administration**

- (a) The *City Manager* shall develop and implement administrative policies, rules, and regulations to carry out the intent of this division, including procedures for handling complaints by *covered employees*. The *City Manager* shall monitor compliance, including conducting periodic reviews of appropriate records maintained by *covered employers* to verify compliance and to investigate claimed violations.
- (b) The *City Manager* is authorized to create a citizens advisory committee for the purpose of making recommendations regarding how the policies and purposes of this division may be advanced.
- (c) On July 1, 2007, or as soon thereafter as is practicable, the *City Manager* shall submit a report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

*(Added 6-6-2005 by O-19386 N.S.)*

**§22.4240 Collective Bargaining Agreements**

The provisions of this division shall not be superseded by any collective bargaining agreement unless the supersession is specifically agreed to in writing by the parties to the collective bargaining agreement.

*(Added 6-6-2005 by O-19386 N.S.)*

**§22.4245 Severability**

If any provision of this division is declared legally invalid by a final judgment rendered in a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable to the extent that the remaining provisions of this division can be enforced in a manner that substantially carries out the objectives of this division.

*(Added 6-6-2005 by O-19386 N.S.)*



## **LIVING WAGE ORDINANCE SYNOPSIS**

### **APPLICABILITY**

The Living Wage Ordinance applies in three types of contractual situations:

- **City service contracts** with a term of more than 90 days and an annual value over \$25,000.
- **Facility Agreements** defined in the ordinance as Petco Park, Qualcomm Stadium, San Diego Sports Arena, San Diego Convention Center, and San Diego City Concourse.
- **Financial Assistance Agreements** defined in the ordinance as direct financial assistance to encourage, facilitate, support or enable:
  - economic development, job creation, or job retention when the combined value over five years is \$500,000 or more; and
  - tourism, arts, and cultural programs with an annual value of \$750,000 or more.

### **EXEMPTIONS**

Certain contracts are **categorically exempt** from the LWO:

- contracts subject to Federal or State law or regulations that preclude LWO applicability;
- cooperative procurement contracts, contracts for services by other governmental entities, or contracts where the City shares management authority with other jurisdictions;
- public works construction, recycling, or solid waste management franchise contracts;
- contracts for purchase of goods, property, or a lease of property with City as lessee unless included services are more than incidental;
- contracts for design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services; and
- contracts where compliance with the LWO is not in the best interests of the City as certified by the Mayor and approved by the City Council.

When the LWO applies to a contract, a contractor or subcontractor may **apply for exemption** if:

- the business employs twelve or fewer employees, including parent and subsidiaries;
- the business is organized under IRS section 501(c)(3) and the highest officer's pay is less than eight times the lowest workers pay; or
- a collective bargaining agreement specifically supersedes the LWO.

### **REQUIREMENTS**

A covered employer must meet the following LWO requirements:

- pay covered employees at the current Fiscal Year 2009 rate of \$10.58/hour plus \$2.12/hour toward health benefits for a total of \$12.70 (rate is adjusted annually);
- provide ten compensated and ten additional uncompensated days off per year;
- submit a *Certification of Compliance* for each applicable project and allow City access to LWO records for inspection;
- inform employees of their possible right to Federal Earned Income Tax Credit; and
- prohibit retaliation against an employee for allegation of LWO non-compliance



**City of San Diego**

**RULES IMPLEMENTING THE LIVING WAGE ORDINANCE**

Effective date: July 1, 2006

Revision date: July 26, 2007

Purchasing & Contracting Department  
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**Appendix B: Living Wage Ordinance Notice and Forms**

Notice to Employees (English, Spanish)

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Application for Exemption

Employee Complaint Form (English, Spanish)

## RULES IMPLEMENTING THE LIVING WAGE ORDINANCE

The purpose of these Rules Implementing the Living Wage Ordinance [Rules] is to provide guidance for contractors to comply fully with the requirements of the City of San Diego's Living Wage Ordinance, Chapter 2, Article 2, Division 42 of the San Diego Municipal Code (SDMC) [the Living Wage Ordinance or simply "LWO"]. These Rules are intended as an administrative aide to carry out the intent of the Living Wage Ordinance and should not be construed to extend, modify, or otherwise alter the substantive provisions of the Living Wage Ordinance.

### A. DEFINITIONS

In addition to the definitions in SDMC § 22.4205, the following definitions shall apply in these Rules:

***Bidder*** includes an applicant for any agreement that is subject to the LWO, whether under a competitive bid, request-for-proposal (RFP), sole source, or other procurement process.

***Business*** means any corporation, partnership, limited liability corporation, joint venture, sole proprietorship, association, or trust, other than a public entity.

***City*** means the City of San Diego, its organizational subdivisions, agencies, offices, or boards, but does not include independent agencies, such as the Housing Authority, Redevelopment Agency, and the Retirement Board, each of which is encouraged to adopt its own living wage policy.

***City facility*** means any of the following facilities that are owned, operated, managed, or leased by the *City*:

- (a) Petco Park;
- (b) Qualcomm Stadium;
- (c) San Diego Sports Arena;
- (d) San Diego Convention Center; or
- (e) San Diego City Concourse.

***City facility agreement*** means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in annual gross receipts to the *business*. *City facility agreement* includes:

- (a) subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year; and

- (b) subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days.

***City facility employer*** means any *business* that has entered into a *City facility agreement*. For the purposes of this division, *City facility employer* includes any sublessee, subcontractor, or concessionaire that retains employees to provide *services* at a *City facility*.

***City Manager*** means the City Manager and his/her delegates and representatives. However, for the duration that the *City* operates under a “Strong Mayor” form of government pursuant to Article XV of the City Charter, *City Manager* means the Mayor and his/her delegates and representatives.

***Community-based social services*** means any recipient of Community Development Block Grants (CDBG) social service contracts.

***Complaint*** means a report of an alleged violation of the LWO.

***Covered employee*** means:

- (a) any individual employed on a full-time, part-time, temporary, or seasonal basis by:
  - (1) a *service contractor* with regard to any hours worked in performance of a *service contract*;
  - (2) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*; or
  - (3) a *City facility employer* with regard to any hours worked at a *City facility*.
- (b) But *covered employee* does not include:
  - (1) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution;
  - (2) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education; and
  - (3) an owner of a *business*.

***Covered employer*** means any *service contractor*, *financial assistance recipient*, or *City facility employer*.

***Financial assistance agreement*** means an agreement between the *City* and a *business* to

provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a) economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. Direct financial assistance includes funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

***Financial assistance recipient*** means any *business* that has entered into a *financial assistance agreement*. For the purposes of this division, *financial assistance recipient* includes all subcontractors retained by a *business* to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

***Health benefits rate*** means a minimum dollar amount per hour toward the cost of health and medical care insurance for *covered employees* and their dependents. Health benefits may include the following types of insurance: medical health coverage, dental, vision, mental health, and disability income. For purposes of the LWO, retirement benefits, accidental death and dismemberment insurance, life insurance, and other benefits that do not provide medical or health-related coverage will not be credited toward the cost of providing *covered employees* with health benefits.

***Incidental services*** means services that are:

- (a) part of an agreement for which the primary purpose is to purchase or rent goods or equipment; and
- (b) performed on a non-recurring and irregular basis. Services are not incidental, even if the primary purpose of the agreement is to purchase goods or equipment, if the agreement provides that services are to be performed on a regular schedule.

***Managerial employee*** and ***supervisory employee*** both mean a person compensated above the living wage rate and who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other subordinate employees, or the responsibility to direct them, adjust their grievances, or recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

***Service contract*** means a contract between the *City* and a *business* with a combined annual value of payments in excess of \$25,000 and with a term of more than 90 days. *Service contract* includes any applicable subcontracts or franchises to furnish *services*.

***Service contractor*** means any *business* that has been awarded a *service contract* subject to this division. For the purposes of this division, *service contractor* includes all *subcontractors* or franchisees retained by a *business* to perform any or all of the functions covered by a *service contract*.

***Services*** means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

- (a) Automotive repair and maintenance;
- (b) Cashiers;
- (c) Child care;
- (d) Concessions/retail sales;
- (e) Facility and building maintenance;
- (f) On-site food service/preparation;
- (g) Janitorial, custodial, and housekeeping;
- (h) Landscaping;
- (i) Laundry services;
- (j) Office/clerical;
- (k) Parking services;
- (l) Pest control;
- (m) Security services;
- (n) Ushers and wheelchair attendants;
- (o) Ticket takers; and
- (p) Warehouse workers.

***Subcontractor*** includes sublessees and concessionaires.

***Wages*** means the amount paid to a *covered employee* as compensation for labor performed. The term does not include any amount paid to a *covered employee* not directly related to the

labor performed, such as for parking, uniforms, meals, and contributions to retirement plans. Aside from a *covered employee's* hourly wages, wages may only include commissions earned by a *covered employee* if the *covered employer* keeps accurate records verifying the amount paid to a *covered employee* for each pay period and follows the requirements set forth in these Rules.

## **B. APPLICABILITY OF LWO**

**1. Types of Covered Agreements.** The majority of the LWO's provisions apply only to *businesses* that enter into the following types of agreements with the City: *service contracts, City facility agreements, and financial assistance agreements.*

### **a. Service Contracts.**

- (1) In determining whether a contract for *services* is 90 days or longer in duration, the term shall be calculated using the starting date of the original contract and the ending date that appears in the most recent amendment, modification, renewal or extension. A contract that was previously exempt from the LWO because it did not meet the 90 days threshold may thereafter become subject to the LWO because an amendment, modification, renewal, or extension increases the duration of the contract.
- (2) In determining whether a contract for *services* exceeds \$25,000 annually, the total amount of the contract shall be calculated by adding together the amount provided for in the original contract and all amendments, modifications, renewals, or extensions. A contract that was previously exempt from the LWO because it did not meet the monetary threshold may thereafter become subject to the LWO because an amendment, modification, renewal, or extension increases the total amount of the contract.
- (3) Contracts for *services* with maximum amounts or that are to be performed on an as-needed basis:
  - (a) For contracts that specify a maximum amount to be expended, that amount shall be used to determine whether the contract exceeds the \$25,000 threshold.
  - (b) Contracts for *services* that are to be performed on an as-needed basis are presumed to be covered by the LWO. The employer will not be required to comply with the wage and benefit requirements of the LWO, however, until the *City* has used over \$25,000 in *services* from the employer or the invoices submitted by the employer exceed \$25,000. Once the \$25,000 threshold is passed, the employer must comply with all requirements of the LWO.

### **b. Agreements to Purchase or Rent Property, Goods or Equipment.** Agreements to

purchase or rent property, goods or equipment that have a component for the provision of *services* are subject to the LWO if the agreement is over \$25,000 annually, at least 90 days in duration, and the *services* to be provided are not *incidental*.

- c. **City Facility Agreements.** *City facility agreement* means an agreement between the City and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in annual gross receipts to the business. *City facility agreements* apply to Petco Park; Qualcomm Stadium; San Diego Sports Arena; San Diego Convention Center; and San Diego City Concourse.

(1) A *City facility agreement* includes:

- (a) Subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year.
- (b) Subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days.

(2) A *City facility agreement*, including any applicable sublease, subcontract, or concession agreement, is subject to the LWO if it is in effect on July 1, 2007, or is entered into after this date. Compliance with this division is required during the term of the *City facility agreement*.

- d. **Financial Assistance Agreements.** *Financial assistance agreements* are subject to the LWO under either of the following conditions:

(1) The *financial assistance agreement* is for economic development, job creation, or job retention and has a combined value over a period of five years of \$500,000 or more.

(a) A *financial assistance agreement* meeting this definition is subject to the LWO if it is entered into, awarded, amended, renewed, or extended on or after July 1, 2006.

(b) Compliance with this division must continue for a period of 5 years after the threshold amount has been received by the *business*.

(2) The *financial assistance agreement* is for tourism, arts, and cultural programs and has a combined annual value of \$750,000 or more.

(a) A *financial assistance agreement* meeting this definition is subject to the LWO if it is entered into, awarded, amended, renewed, or extended on or after July 1, 2007.

(b) Compliance with this division must continue for one year after the threshold amount has been received by the *business*.

2. **Anti-Retaliation Provision.** The LWO's prohibition against retaliation (SDMC § 22.4230(b)) is not limited to *covered employers*. The anti-retaliation provision is separate from the LWO's wage and benefits provisions and applies to all *businesses*, even if those *businesses* are exempt from the LWO's wage and benefits provisions.
3. **Presumption of Coverage.** An agreement, request for proposal, request for bid, or request for quote for any of the agreements in the foregoing paragraph (Rule B.2) is presumed to be covered by the LWO unless specifically exempted by the LWO or these Rules.
4. Agreements shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the LWO requirements.
5. Leases and licenses that involve *services* to be performed on *City facility* property are presumed subject to the LWO.
6. The Purchasing Agent has the final authority in determining whether an agreement is subject to the LWO.

## C. EXEMPTIONS

1. **Categorical Exemptions.** Except for *City facility agreements*, the following categories of agreements shall be exempt from the LWO:
  - a. Contracts subject to federal or state law or regulations that preclude applicability of the LWO.
  - b. Contracts where the *City* shares management authority with other jurisdictions unless all those jurisdictions agree to the applicability of the LWO.
  - c. Contracts for *services* by other governmental entities.
  - d. Public works construction, recycling, or solid waste management franchise contracts.
  - e. Cooperative procurement contracts.
  - f. Contracts for purchase of goods, property, or a lease of property with *City* as lessee, unless the contracts include a component for services that are more than *incidental services*.
  - g. Contracts for design, engineering, financial, technical, legal, banking, medical

management, operating, advertising, or other professional services.

- h. Contracts where compliance with the LWO is not in the best interests of the *City* as certified by the *City Manager* and approved by the *City Council*.

**2. Exemptions Requiring Purchasing Agent's Approval.** In order to qualify for the following exemptions, contractors must submit an Application for Exemption on the form included in Appendix B. The exemption is not valid until the Purchasing Agent approves the contractor's application, via a Certificate of Exemption.

- a. *Businesses* employing 12 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, if the *City* determines the *business*, including its *subcontractors*, will not need to retain more than 12 employees to perform work related to the subject agreement.

(1) The number of employees includes:

- (a) The contractor's employees as of the date the contract is signed;
- (b) The employees the contractor reasonably believes it will hire during the course of the contract, whether those employees will work on the City contract or not;
- (c) The employees of the contractor's parent and subsidiary entities; and
- (d) The employees of any *subcontractors* the contractor proposes to use to perform all or a portion of the service covered by the contract.

(2) Along with the Application for Exemption, the contractor must provide written documentation of the number of employees. A letter on the contractor's letterhead and signed by an officer who is authorized to legally bind the entity shall be sufficient.

(3) A previously exempt contract may later become subject to the LWO if the number of employees exceeds 12 as calculated according to these Rules.

- b. *Businesses* organized under section 501(c)(3) of the United States Internal Revenue Code, 26 U.S.C. § 501(c)(3) to provide community-based social services, other than child care services. Such *businesses* must provide the following additional documents in support of an Application for Exemption:

(1) A copy of the most recent IRS letter indicating that the *business* has been recognized as a non-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

(2) A statement showing that the *business's* highest paid officer's salary, when

calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee.

- (a) The “lowest paid full-time employee” refers to the lowest paid full-time employee of the *business*, regardless of whether that employee works on the *City* agreement.
- (b) In calculating the salary of the highest paid officer and the wage rate of the lowest paid full-time employee, items such as cash allowances for car expenses, meals, parking, or the value of pension plan contributions shall not be included.
- c. **Collective Bargaining Agreement:** A collective bargaining agreement may exempt a contract from the LWO provided such waiver or exemption is explicitly stated in the collective bargaining agreement.
  - (1) If the collective bargaining agreement does not specifically indicate that it is exempt from, or waives, the provisions of the LWO, the employer shall submit written confirmation from the union representing the employees that the union and the employer have agreed that the collective bargaining agreement supersedes the LWO.
  - (2) The provisions of the LWO shall not be interpreted to require an employer to reduce the wages and benefits required by a collective bargaining agreement.
- d. **Negotiation of Collective Bargaining Agreement:** An employer subject to the LWO may apply for provisional exemption from the LWO if the employer and the union are engaged in negotiations and the issue of supersession of the LWO has been proposed. If provisional exemption status is granted, it is valid until the end of the negotiation process.
  - (1) The employer must provide sufficient documentation with the application and shall provide status reports upon request from the *City*.
  - (2) At the end of the negotiation process, the employer shall provide the Purchasing Agent with a copy of the final collective bargaining agreement to verify whether it supersedes the LWO and the effective dates.
    - (a) If the final collective bargaining agreement supersedes the LWO, the employer shall be exempt for the time period covered by the effective dates. However, the employer remains subject to all applicable provisions of the LWO for the time period not covered by that collective bargaining agreement and if the employer has not complied with the LWO during the time period not covered by that collective bargaining agreement, the employer shall make retroactive corrections.

- (b) If the final collective bargaining agreement does not supersede the LWO, the employer shall be required to comply with all applicable LWO requirements, including the wage and benefits provisions. Compliance shall also be required retroactively to the date the employer first became subject to the LWO. If necessary, the employer shall provide retroactive payments to *covered employees*.

**3. Determination of Exemption.** The Purchasing Agent shall review Applications for Exemption and provide a final determination within 10 working days of receipt of all forms and documentation.

- a. A determination by the Purchasing Agent that a bidder or employer is exempt from the LWO exempts the bidder or employer only for the agreement for which the application was submitted. Approval does not exempt the bidder or employer for any other bid or agreement.
- b. An exemption approval does not extend to any *subcontractor* unless the *subcontractor* separately applies for and is granted an exemption from the LWO or unless the Purchasing Agent has categorically exempted the agreement.
- c. If the Purchasing Agent categorically exempts an agreement from the LWO, then neither the prime contractor nor any *subcontractor* working on the agreement will be subject to the LWO.
- d. An exemption from the LWO granted by the Purchasing Agent does not extend to the anti-retaliation provision of the LWO. Notwithstanding the Purchasing Agent's determination that an agreement is exempt, the employer and *subcontractors* are required to comply with the prohibition against retaliation.

## **D. EMPLOYER REQUIREMENTS**

All employers, including *subcontractors*, who perform work or provide *services* pursuant to an agreement that is subject to the LWO must comply with all requirements of the LWO and these Rules.

### **1. LWO Requirement of Minimum Compensation.**

- a. *Covered employers* must pay *covered employees* a "living wage" which shall be no less than the minimum initial compensation as defined in the LWO and included in Attachment A. If the employer offers no health benefits, the *covered employer* shall pay the *covered employee* at least the full cash living wage rate. If the *covered employer* offers health benefits, the terms must be in accordance with the LWO and these Rules.
- b. The Purchasing Agent shall upwardly adjust wage rates each fiscal year, effective July 1, to reflect the change in the regional Consumer Price Index for All Urban

Consumers. The Purchasing Agent shall provide notice of the new wage rate by publishing an announcement of such wage adjustments on the *City's* website.

- c. *Covered employers* are required to pay the living wage rate and benefits to *covered employees* working on the *City* agreement for each hour the employee works on the subject agreement. Benefits include health care or cash equivalent, compensated days off, and uncompensated days off.
  - d. A *covered employer* shall not use tips or gratuities earned by a *covered employee* to offset the amount required by the LWO.
- 2. LWO Health Benefits.** *Covered employers* may pay *covered employees* the living wage either fully in cash or largely in cash and partly by a health benefits payment of a minimum dollar amount per hour toward the cost of health and medical care insurance as defined in the LWO and these Rules.
- a. If the *covered employer* elects not to provide health and medical care insurance, the full cash living wage rate must be paid to a *covered employee*.
  - b. If the *covered employer* elects to provide a *covered employee* with health and medical care insurance, proof of the provision of health benefits must be submitted to the Purchasing Agent not later than 10 calendar days after a request for such documentation.
    - (1) If the submitted documentation does not demonstrate that health benefits are provided in accordance with the LWO and these Rules, the *covered employer* will be considered to be out of compliance with the LWO until sufficient documentation is received.
    - (2) In addition to remedies provided for by the LWO, failure to provide the requested information may result in payment being withheld until documents are submitted.
  - c. If the *covered employer* elects to provide health and medical care insurance through a plan costing less than the minimum dollar amount per hour as specified in the LWO, the difference shall be added to the *covered employee's* hourly wage rate as cash payment.
  - d. A co-premium may be required of a *covered employee* only if the cost of health and medical care insurance is greater than the minimum dollar amount per hour as specified in the LWO.
- 3. Compensated and Uncompensated Time Off.** A *covered employer* must provide a *covered employee* working on the *City* agreement at least 10 compensated days off per year for sick leave, vacation, or personal necessity at the *covered employee's* request, and 10 additional uncompensated days off per year for sick leave for illness of the *covered employee* or an immediate family member, when the *covered employee* has exhausted all

accrued compensated days off.

- a. A *covered employee* shall accrue a minimum of 10 compensated days off per year of full-time employment based on the *covered employee's* regularly scheduled work hours. A part-time *covered employee* shall accrue compensated days off in increments proportional to that accrued by a full-time *covered employee*.
  - (1) A *covered employer* may not unreasonably deny a *covered employee's* request to use an accrued compensated day off.
  - (2) A *covered employee's* request for time off is presumed to be a request for paid time off unless the *covered employee* has specifically asked that unpaid time off is used.
  - (3) A *covered employee* shall be eligible to use accrued paid days off after the first 6 months of employment or consistent with company policy, whichever is sooner.
  - (4) A *covered employee* shall accrue time off unless the *covered employee* has been on a leave of absence without pay for over 30 calendar days.
  - (5) Upon return to work following an unpaid leave of absence of more than 30 calendar days, a *covered employee* shall begin to accrue compensated days off at the appropriate applicable full-time or part-time rate.
- b. Paid holidays that are provided under established employer policy shall not be counted toward the provision of the 10 compensated days off.
  - (1) Payment of premium pay for work performed on a holiday does not constitute a compensated day off for purposes of the LWO.
  - (2) For a holiday to qualify as one of the minimum 10 paid days off required under the LWO, a *covered employee* who works on a holiday must be allowed to take another paid day off in lieu, even if the *covered employee* is provided with premium pay for the hours worked on the holiday.
- c. Unused compensated days off accrued by a *covered employee* working on a subject agreement shall be carried over for at least one year, with the carryover date based on the date of accrual.
- d. The LWO does not require the *covered employer* to cash out compensated days off upon a *covered employee's* termination unless otherwise required by law.
- e. A *covered employer* may choose to provide *covered employees* with more compensated days off than is required under the LWO and these Rules.
- f. The Purchasing Agent may allow a *covered employer's* established compensated

time off policy to remain in place, even though it does not meet the accrual rate and eligibility deadlines required in these Rules, if the Purchasing Agent determines all of the following conditions are met:

- (1) The *covered employer's* established policy provides *covered employees* with more than 10 paid days off per year;
  - (2) At least a portion of the paid days off are available for use by *covered employees* within the first year of employment; and
  - (3) The Purchasing Agent determines requiring the covered employer to change its policy to comply with these Rules will result in *covered employees* receiving fewer benefits.
- g. At least 10 uncompensated days off shall be made available, as needed, for personal or immediate family illness after a *covered employee* has exhausted his or her compensated days off. Whether a *covered employee* may take uncompensated time off before exhausting accrued compensated time off shall be determined by the *covered employer*. Accrual from year to year of uncompensated days off is not mandated by the LWO.
- h. A *covered employer* working on or under the authority of a subject agreement who fails to provide *covered employees* with time off in accordance with the requirements of the LWO and these Rules shall provide the affected *covered employees* with the time off retroactive to the effective date of the agreement or amendment. A *covered employer* required to provide *covered employees* with time off retroactively shall:
- (1) Calculate the amount of compensated time off the *covered employee* should have accrued under the LWO and pay the *covered employee* the cash value at the wage rate the *covered employee* was earning when the compensated time-off should have accrued.
  - (2) Calculate the amount of uncompensated time off that the *covered employee* should have accrued under the LWO and add the additional amount of uncompensated time-off the *covered employees* should have earned to the uncompensated time-off already accrued by the *covered employee*.

#### **4. LWO Notice to Employees.**

- a. A *covered employer* shall post a copy of the LWO Notice to Employees included in Appendix B in a prominent place in an area frequented by employees.
- b. A *covered employer* shall notify each current employee, and each new employee at time of hire, of his or her rights under provisions of the LWO by providing employees with a copy of the LWO Notice to Employees in Appendix B.

**5. Federal Earned Income Tax Credit (EITC).** Within 30 days of commencement of work on a *City* agreement or subcontract subject to the LWO, the *covered employer* shall inform all *covered employees* of their possible right to EITC.

**6. Reporting Requirements.**

- a. Each *covered employer* shall file an LWO Certification of Compliance with the Purchasing Agent within 30 days of becoming a *covered employer*.
  - (1) *Covered employers* are required to ensure that all applicable *subcontractors* file an LWO Certification of Compliance within 30 days of becoming covered by the LWO.
  - (2) The LWO Certification of Compliance shall be completed on the form included in Appendix B.
  - (3) Failure to file an LWO Certification of Compliance may result in payment being withheld until the document is submitted.
- b. Contractors shall maintain, and shall require *subcontractors* covered by the LWO to maintain, payroll records on *covered employees* containing the following information:
  - (1) Name.
  - (2) Address.
  - (3) Date of hire.
  - (4) Job classification.
  - (5) Rate of pay.
  - (6) Paid and unpaid time off (accrued and used).
  - (7) Hours worked in each pay period.
- c. Contractors and *subcontractors* shall retain records sufficient to document that employers have provided LWO benefits to *covered employees*. *Covered employers* shall make these records available for inspection to the *City* upon request. *Covered employers* shall make a *covered employee's* individual records available for inspection to the *covered employee* upon such a request.
- d. Contractors and *subcontractors* must maintain the records referred to in these Rules for 3 years after the *City's* final payment on the contract.

7. **Contractor Annual Reports.** Each *covered employer* shall file an annual report with the Purchasing Agent regarding compliance with the LWO. The Purchasing Agent shall prescribe the contents and due date of the report. The *City* may require a contractor to submit additional reports.
8. **City Access to Employer Records to Monitor Compliance with the LWO.** A *covered employer*, subject to the LWO, shall allow authorized *City* representatives access to work sites, upon request, to monitor compliance and investigate employee *complaints*. A *covered employer* shall submit, upon request, copies of payrolls, health benefit statements, and related documents to comply with the LWO. The *City* may require the *covered employer* to submit other documentation. Failure to submit documents or allow access to the work sites as requested may be deemed as non-compliance with the LWO. In addition to remedies provided for by the LWO, such non-compliance may result in a recommendation that the *covered employer's* subject agreement be terminated and/or payments to the *covered employer* be withheld until access is provided and documentation is submitted.
9. **Disclosure of Documents and Information.** Documents and information obtained in the course of administration of the LWO become *City* records. Disclosure is subject to provisions and limitations of the California Public Records Act. Consistent with the Public Records Act, documents and information obtained during the course of an investigation or inquiry shall remain confidential while the investigation or inquiry is ongoing.
10. **Subcontractors Subject to the LWO.** A *subcontractor* performing work or providing *services* on an agreement subject to the LWO shall also comply with the LWO unless the *subcontractor* qualifies for an exemption. A *subcontractor* may be subject to the LWO even if the prime contractor has been granted an exemption.
  - a. A prime contractor is responsible for informing its *subcontractor* of the *subcontractor's* obligation to comply with the LWO. Language obligating the *subcontractor* to comply with the LWO shall be included in each subcontract between the prime contractor and the *subcontractor*.
  - b. If the Purchasing Agent finds that a prime contractor intentionally entered into separate agreements to keep subcontracts below the 90-day or \$25,000 thresholds, the *City* may determine that the separate subcontracts are subject to the LWO.
  - c. If the Purchasing Agent finds that an employer classified a worker as an independent contractor in order to avoid complying with the LWO, the Purchasing Agent may require the employer to comply with the LWO and/or recommend terminating the employer's agreement. The Purchasing Agent may consider the following factors in determining whether a worker is a bona fide independent contractor:
    - (1) Whether the worker has the right to control or discretion to determine how to perform the work required under the *City* agreement.

- (2) Whether similar workers in the industry or field are customarily engaged as independent contractors for the type of work.
- (3) Whether the worker has any substantial investment other than personal services in the business.
- (4) Whether the worker has control over the time and place of work.
- (5) Whether the worker supplies his or her own tools or equipment, if they are normally used by persons engaged in such work.
- (6) Whether the worker hires employees.

#### **E. ADMINISTRATIVE RECORDKEEPING AND REPORTS**

- 1. **LWO Administrative Records and Reports.** The Purchasing Agent shall maintain a list of all subject and exempt agreements and a file of all *complaints*, findings, and results. The Purchasing Agent may provide special reports and recommendations on significant issues of interest to the City Council.
- 2. **Report to Council.** The Purchasing Agent shall provide a report to the City Council generally describing the effects of the LWO upon the City.
- 3. **Annual LWO Wage Rate Adjustment.** Beginning July 1, 2007, the hourly wage rates and health benefits rate shall be upwardly adjusted each July 1 to reflect the change in the regional Consumer Price Index for All Urban Consumers for the twelve-month period preceding December 31 of the previous year. Prior to April 1 of each year, the *City* shall calculate the new rates and provide notice by posting on the *City's* website the rates in effect for the next fiscal year.

#### **F. MONITORING AND INVESTIGATION**

These Rules will augment the *City's* normal and customary procedure for administering its contracts.

- 1. **Review of Agreements.** The Purchasing Agent will ensure that standard LWO contract language is incorporated into all agreements subject to the LWO.
- 2. **Employer Monitoring.** The Purchasing Agent will monitor the operations of *covered employers* to ensure compliance by conducting site visits and payroll audits. The Purchasing Agent may review the provision of wages and benefits by a *covered employer* as part of site visits. A *covered employer* shall cooperate with the Purchasing Agent when a meeting, a site visit, or documentation is requested. Cooperation includes providing:
  - a. Full access to the work site for employer and employee interviews.

- b. Copies of certified payrolls, timesheets, health and benefit statements, employee policy manuals, and any other document that would assist in determining if a *covered employer* is providing or has provided the wages and benefits required by the LWO.
3. **Investigation in Response to Specific Concerns or Complaints.** The City may initiate an investigation when there is a specific concern or complaint about a *covered employer*. If a *covered employee* alleges noncompliance with the LWO or retaliation by the contractor as a result of an allegation, the *City* may, in its sole discretion, initiate an investigation pursuant to these Rules.
  4. **Employer's Failure to Reasonably Cooperate.** If a *covered employer* fails to produce requested documentation, fails to allow access to the work site or the *covered employees* for employee interviews, or otherwise unreasonably fails to cooperate, the Purchasing Agent may consider the *covered employer* to be out of compliance with the LWO. In addition to remedies provided in the LWO, the Purchasing Agent may request payments to the *covered employer* be withheld until the *covered employer* cooperates.

## G. ENFORCEMENT

1. **Notice to Employer of LWO Violations.** If the Purchasing Agent determines that an employer is not in compliance with the LWO, the Purchasing Agent will notify the employer of the determination and allow the employer 10 working days to correct the violation. The Purchasing Agent retains the discretion to allow the employer additional time to make corrections if the employer demonstrates a good faith effort to comply.
2. **Remedies.** If an employer continues to fail to comply and no resolution is imminent, the Purchasing Agent may pursue available remedies including:
  - a. Withholding of contract payments.
  - b. Termination of the contract for cause.
  - c. Debarment from future *City* agreements, leases, and licenses for up to 3 years.
  - d. Any other remedy that may be available to the *City*.
3. **Prime Contractor Responsible for Subcontractor.** A *covered employer* who is a prime contractor is responsible to:
  - a. Inform covered *subcontractors* of their obligation to comply with the LWO;
  - b. Include language requiring the *subcontractor* to comply with the LWO in each subcontract between the prime contractor and a covered *subcontractor*;
  - c. Require covered *subcontractors* to file a Certificate of Compliance within 30 days of

becoming a *covered employer*; and

d. Cooperate with the *City's* investigation of covered *subcontractors*.

**4. Employee's Right to File Action.** An employee claiming a violation of the LWO shall have the right to file an action against his or her employer in the appropriate court within one year after discovery of the alleged violation. The court may award the following:

a. For failure to pay the required living wage: the difference between the required living wage and the amount actually paid to the employee, plus interest.

b. For failure to pay the health benefits rate: the difference between the required health benefits rate and the amount actually paid towards the health benefits rate, plus interest.

c. For retaliation for exercise of any rights provided for under the LWO: reinstatement, back pay, or any other relief that a court may deem appropriate.

d. For a willful violation of this division, a court may award as a penalty up to treble the amount of monies to be paid as damages.

e. The court may award reasonable attorney's fees and costs to an employee who prevails in any such private action and to an employer who prevails if the employee's suit is found to be frivolous.

**5. Prohibition against Retaliation.** Neither an employer nor an employer's representative shall take any action against an employee in retaliation for providing information towards or cooperating in an investigation regarding compliance with the LWO. If an employee is terminated, demoted, or otherwise penalized by an employer or employer's representative within 60 days of providing information towards or cooperating in an investigation regarding compliance with the Living Wage Ordinance, a rebuttable presumption shall arise that the action was taken in retaliation for the employee's participation and shall be considered a violation of these Rules.

## H. EMPLOYEE COMPLAINT PROCESS

**1. Employee Complaints.** An employee who alleges violation of any provision of the LWO by an employer may report such acts to the Purchasing Agent and, at the employee's discretion, exhaust available employer internal remedies. An employee making a complaint regarding an employer's compliance with the LWO must submit the complaint in writing to the Purchasing Agent, on the LWO Employee Complaint Form, which is included in Appendix B.

**2. Complaints Alleging Retaliation.** An employee claiming retaliation (such as termination, reduction in wages or benefits, or adverse changes in working conditions) under terms of the LWO may report the alleged retaliation to the Purchasing Agent in

writing, on the LWO Employee Complaint Form, which is included in Appendix B.

3. **Confidentiality of Information during Investigation.** Consistent with the California Public Records Act, information and records obtained by the *City* in the course of its complaint investigations, including identity of the complainants and witnesses, shall be considered confidential and exempt from public disclosure during the course of the investigation.
4. **Investigation of Employee Complaints.** Upon receipt of an employee's written *complaint*, the *City* may, in its sole discretion, decide to investigate and address any alleged violation of LWO requirements. Upon conclusion of the investigation, the Purchasing Agent shall notify the employee of the results.
5. **Resolution of Investigation into Employee Complaints.** The *City* will attempt to complete an investigation into an employee's *complaint* within 30 to 60 days. If the investigation is not complete within 60 days, the Purchasing Agent shall notify the employee of the status of the investigation and provide regular status reports to the employee every 30 days until the investigation is completed.
6. **Submission of Additional Information after Completion of Investigation.** Upon completion of an investigation, the Purchasing Agent will notify the *covered employee*, and the *covered employer* if appropriate, of the investigation results.
  - a. Either the employee or the employer may request reconsideration of the Purchasing Agent's investigation findings. Such request for reconsideration shall be based solely on discovery of new information, which, along with the written reconsideration request, shall be submitted to the Purchasing Agent, within 30 days of receiving notice of the findings.
  - b. If the request for reconsideration and new information is received before the 30 day deadline, the Purchasing Agent will re-evaluate the original *complaint* and notify the employee and the employer the result of the reconsideration.
  - c. If the request for reconsideration and the new information is submitted after the 30 day deadline, the discretion of whether to reopen the investigation shall lie solely with the Purchasing Agent.
7. **Payment of Amounts Due to Employees.** If corrective payments are required to be paid to employees in order to comply with the LWO, the employer shall pay the entire amount due to each employee in one payment within the time period required by the *City* in its notice to the employer.

**City of San Diego**  
**CURRENT LIVING WAGE RATES**

<b>EFFECTIVE DATES</b>	<b>CASH WAGE + HEALTH BENEFITS</b>	<b>FULL CASH WAGE</b>
July 1, 2007 – June 30, 2008	\$10.34 + \$2.07 per hour in Health Benefits	\$12.41 per hour
July 1, 2006 – June 30, 2007	\$10.00 + \$2.00 per hour in Health Benefits	\$12.00 per hour

For additional information, please contact:

Purchasing & Contracting Department  
1200 Third Avenue, Suite 200  
San Diego, CA 92101  
Phone: 619/236-6000  
Fax: 619/533-3236

**City of San Diego**

**LIVING WAGE ORDINANCE  
NOTICE AND FORMS**

The notice and forms listed below are approved by the City for use in conjunction with these Rules. When these Rules refer to the use of a notice or form, only the current version included in this Appendix B may be used.

**NOTICE:**

Living Wage Ordinance Notice to Employees (English, Spanish)

**FORMS:**

Living Wage Ordinance Certification of Compliance

Living Wage Ordinance Application for Exemption

Living Wage Ordinance Employee Complaint Form (English, Spanish)

## LIVING WAGE ORDINANCE



## ORDENANZA DEL SUELDO DIGNO

## NOTICE TO EMPLOYEES

This employer is a contractor with the City of San Diego. This contract is subject to the Living Wage Ordinance. You must be paid "a living wage" for any hours you work on this contract.

## THESE ARE YOUR RIGHTS...

## MINIMUM HOURLY PAY:

- \$10.34/hour plus at least \$2.07/hour in health benefits OR
- \$12.41/hour without health benefits.
  - If health benefits cost less than \$2.07/hour, the difference is added to the hourly wage.
  - Rates are adjusted annually; current rates are effective until July 1, 2008.

## MINIMUM DAYS OFF PER YEAR:

- 10 paid days for vacation, sick leave, or other personal need AND
- 10 unpaid days for personal or family illness.
  - Days off are in addition to paid holidays.
  - Days off are pro-rated based on hours worked at the living wage rate.

## RETALIATION IS PROHIBITED:

- Employers may not fire, reduce pay or discriminate against a worker for filing a complaint.

## FOR MORE INFORMATION

For more information or to obtain a complaint form if you believe your rights are being violated, please contact:

## AVISO PARA EMPLEADOS

Este empleador es contratista de la Ciudad de San Diego. Este contrato está sujeto a la Ordenanza del Sueldo Digno. Usted debe ser pagado "un sueldo digno" por cada hora trabajada bajo este contrato.

## ESTOS SON SUS DERECHOS...

## COMPENSACIÓN MÍNIMA POR HORA:

- \$10.34/hora más un mínimo de \$2.07/hora para beneficios médicos O
- \$12.41/hora sin beneficios médicos.
  - Si beneficios médicos cuestan menos de \$2.07/hora, la diferencia es añadida al salario.
  - El sueldo es ajustado anualmente; el sueldo corriente es en vigencia hasta Julio 1, 2008.

## DÍAS LIBRES, AL MÍNIMO, CADA AÑO:

- 10 días pagados de vacación, enfermedad, o razones personales Y
- 10 días sin pagar de enfermedad personales o familia.
  - Días libres son agregados a los días festivos.
  - Días libres son ajustados por horas trabajadas al sueldo digno.

## LA REPRESALIA SE PROHIBE:

- Los empleadores no pueden despedir, reducir la paga, ni discriminar contra un trabajador para quejar.

## PARA MAS INFORMACION

Para más información o para obtener un formulario de quejas si usted considera que sus derechos han sido violados, por favor llame:

CITY OF SAN DIEGO  
Purchasing & Contracting Department  
Living Wage Administration  
1200 Third Avenue, Suite 200  
San Diego, CA 92101  
619/533-3948

07.01.07

**LIVING WAGE ORDINANCE  
CERTIFICATION OF COMPLIANCE**



Send form to:

ATTACHMENT C  
**CITY OF SAN DIEGO**  
Purchasing & Contracting Department  
Living Wage Administration  
1200 Third Avenue, Suite 200  
San Diego, CA 92101

**COMPANY INFORMATION**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Company Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

**CONTRACT INFORMATION**

Contract Number (if no number, state location): \_\_\_\_\_

Start Date: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

End Date: \_\_\_\_\_

Purpose/Service Provided: \_\_\_\_\_

**TERMS OF COMPLIANCE**

A contractor or subcontractor working on or under the authority of an agreement subject to the Living Wage Ordinance (LWO) must comply with all applicable provisions of the LWO unless specifically approved for an exemption. The basic requirements of the LWO obligate contractors and subcontractors to:

- (a) Pay covered employees a wage no less than the minimum initial compensation of \$10.34 per hour (adjusted annually on July 1).
- (b) Provide covered employees a health benefit of \$2.07 per hour (adjusted annually on July 1) or, if any lesser amount is applied toward a health plan, to add this difference to the hourly wage rate as cash payment.
- (c) Provide a minimum of 10 compensated days off per year for vacation, sick leave, or other personal need at the employee's request and to provide 10 additional uncompensated days off for personal or family illness when accrued compensated days off have been used.
- (d) Inform all covered employees of their possible right to Federal Earned Income Tax Credit within 30 days of contract start.
- (e) Permit access for authorized City representatives to work sites and relevant records to review compliance with the LWO.
- (f) Prohibit retaliation against any employee who alleges non-compliance with the requirements of the LWO.

If a subcontractor fails to submit this completed form, the prime contractor may be found in violation of the LWO for failure to ensure its subcontractor's compliance. This may result in a withhold of payments or termination of the agreement.

**CONTRACTOR CERTIFICATION**

By signing, the contractor certifies under penalty of perjury under laws of the State of California to comply with the requirements of the Living Wage Ordinance.

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FOR OFFICIAL CITY USE ONLY**

Date of Receipt: \_\_\_\_\_

LWO Analyst: \_\_\_\_\_

Contract Number: \_\_\_\_\_

# LIVING WAGE ORDINANCE APPLICATION FOR EXEMPTION



Send form to:

ATTACHMENT C  
**CITY OF SAN DIEGO**  
Purchasing & Contracting Department  
Living Wage Administration  
1200 Third Avenue, Suite 200  
San Diego, CA 92101

## COMPANY INFORMATION

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Company Contact Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

## CONTRACT INFORMATION

Contract Number (if no number, state location): \_\_\_\_\_

Start Date: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

End Date: \_\_\_\_\_

Purpose/Service Provided: \_\_\_\_\_

## EXEMPTION BASIS

Check one option and submit required supporting documentation.

- ☐ **Business employs 12 or fewer employees**, including parent and subsidiary entities, for each working day in each of 20 or more calendar weeks in current or preceding calendar year. §SDMC 22.4215 (b)(1).

Required documentation: Correspondence on company letterhead and signed by a legally authorized officer documenting number of employees.

- ☐ **Business organized under IRS section 501(c)(3)** and highest officer's salary, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee. §SDMC 22.4215 (b)(2).

Required documentation: Copy of IRS letter recognizing status as non-profit organized under section 501(c)(3) AND statement of salary listing corporation's highest paid officer and lowest paid worker, both computed on an hourly basis.

- ☐ **Collective Bargaining Agreement** is in place which specifically supersedes the Living Wage Ordinance. §SDMC 22.4240.

Required documentation: Copy of collective bargaining agreement OR written confirmation from union representing employees working on the contract.

- ☐ **Other – Cite LWO Municipal Code section:** \_\_\_\_\_

Required documentation: Correspondence explaining basis of request for exemption.

## CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California that information submitted in support of this application is true and correct to the best of the contractor's knowledge.

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approval of this application exempts only the listed contractor from the LWO during performance of this contract. A subcontractor performing work on this contract is not exempt unless separate exemption has been applied for and approved.

## FOR OFFICIAL CITY USE ONLY

- ☐ Not Approved – Reason: \_\_\_\_\_

☐ Approved

LWO Analyst: \_\_\_\_\_

Date: \_\_\_\_\_

# EMPLOYEE COMPLAINT FORM

## FORMULARIO DE QUEJAS



Send form to:

**CITY OF SAN DIEGO**  
 Purchasing & Contracting Department  
 Living Wage Administration  
 1200 Third Avenue, Suite 200  
 San Diego, CA 92101

### COMPANY INFORMATION

### INFORMACIÓN SOBRE LA COMPAÑÍA

Company Name:  
*Nombre de la Compañía:*  
 Company Address:  
*Dirección de la Compañía:*  
 Company Phone:  
*Teléfono de la Compañía:*  
 Work Site Address:  
*Sitio de Trabajo:*  
 Supervisor Name:  
*Superintendente/Gerente:*

### EMPLOYEE INFORMATION

### INFORMACIÓN SOBRE EL EMPLEADO

Your Name: <i>Su Nombre:</i>	Social Security Number: <i>Número de Seguridad Social:</i>
Address: <i>Dirección:</i>	
Telephone number <i>Número de teléfono</i>	Home: <i>Residencia:</i>
	Work: <i>Trabajo:</i>
Hourly Rate Paid: <i>Sueldo por hora:</i>	Overtime Rate Paid: <i>Sueldo por horas extras:</i>
Current job title: <i>Título de Trabajo:</i>	How long have you worked for this company? <i>¿Cuán largo le tiene trabajo para esta compañía?</i>
Do you receive health benefits? <i>¿Recibe usted beneficios médicos?</i>	If Yes, how much do you pay for your benefits? <i>¿Si SI, cuánto le hace paga por sus beneficios?</i>

### EMPLOYEE COMPLAINT

### QUEJA DE EMPLEADO

Use reverse side if needed  
*Use el reverso si requiere de mas espacio*

Signature · *Firma del Empleado*Date · *Fecha*

### FOR OFFICIAL CITY USE ONLY

### PARA LA OFICINA DE LA CIUDAD SOLAMENTE

Date of Receipt:

LWO Analyst:

Contract Number:

**Living Wage Ordinance Contracts in Fiscal Year 2008**  
**(July 1, 2007 - June 30, 2008)**

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start Date</u>	<u>Contract Amount</u>
3641-01-Z	Parking Management Services at Evan Jones Parkade	Ace Parking Management, Inc	08/02/2005	\$357,000
3786-01-T	Janitorial Maintenance Service at Police Headquarters	Qualityway Building Maintenance	09/01/2005	\$322,134
4744-02-T	Fire Communications and Repair Facility with Janitorial Maintenance Service	Aztec Landscaping, Inc	02/11/2006	\$36,770
4906-02-G	Janitorial Maintenance at San Diego World Trade Center and Crabtree Building	San Diego Services	07/31/2006	\$118,583
4920-02-G	Janitorial Maintenance Service at Various Comfort Stations and Park Restroom Facilities	Aztec Landscaping, Inc	06/15/2006	\$57,873
5335-04-H	Landscape Maintenance within the Northwest Otay MAD	Acacia Landscape Company	12/08/2007	\$318,278
5749-03-A	Janitorial Maintenance Service at South Bay Waste Water Treatment Plant	Aztec Landscaping, Inc	12/14/2006	\$74,802
5833-03-A	Janitorial Maintenance Service for Miramar Landfill	Jani-King of California, Inc	06/02/2007	\$46,818
6126-03-A	Janitorial Maintenance Miss Trails Visitors Ctr, Kumeyaay Camp, & Cowles Mtn Comfort Sta	Empire Maintenance Company, Inc	07/01/2007	\$58,640
6174-04-H	Palm Tree Trimming for approx 30,000 Queen, Fan, Date Palms & Palm Tree Planting	United Pacific Services, Inc	08/25/2007	\$582,821
6174-04-H	Palm Tree Trimming for approx 30,000 Queen, Fan, Date Palms & Palm Tree Planting	Great Scott Tree Service, Inc	08/25/2007	\$890,131
6257-04-Y	Security Guard Services at Park & Recreation	The Wackenhut Corp	10/01/2007	\$122,200
6415-04-A	Janitorial Maintenance Service for Metropolitan Biosolids Center	T and T Janitorial	01/05/2008	\$44,022
6427-04-A	Janitorial Maintenance Service for Point Loma Wastewater Treatment Plant	NMS Management, Inc	01/12/2008	\$59,051
6472-04-H	Landscape Maintenance of Carmel Del Mar Neighborhood Park & Comfort Station	Aztec Landscaping, Inc	01/05/2007	\$39,614
6487-04-H	Landscape and Comfort Station Maintenance Scripps Ranch Comm Park & Joint Use Turf	Acacia Landscape Company	02/01/2008	\$109,952
6491-04-H	Landscape Maintenance of Designated Areas with La Jolla Village Dr MAD	Blue Skies Landscape Maintenance Inc	02/09/2008	\$44,232
6508-04-H	Landscape Maintenance of Various Police Department Facilities	Contemporary Design Landscape	02/09/2008	\$242,791
6584-04-H	Landscape Maintenance in City Heights Urban Village	Trugreen - Landcare Regional	03/29/2006	\$98,259
6596-04-H	Landscape Maintenance of Designated areas within Miramar Ranch North MAD	Blue Skies Landscape Maintenance Inc	07/01/2008	\$837,778
6609-04-Y	Uniforms for Park & Rec Employees	Ameripride Uniform Services	06/01/2008	\$42,156

**Living Wage Ordinance Contracts in Fiscal Year 2008**  
(July 1, 2007 - June 30, 2008)

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start Date</u>	<u>Contract Amount</u>
6613-04-H	Landscape Maintenance of Designated Areas Within Coral Gale MAD	Acacia Landscape Company	06/01/2009	\$63,039
6631-04-H	Landscape Maintenance of Ashley Falls Neighborhood Park & Comfort Station	Acacia Landscape Company	06/28/2008	\$85,749
6659-04-T	Window Cleaning Services	Building Trust Services, Inc DBA Pro Window Cleaning Co	05/12/2008	\$61,860
6710-05-Y	Landscape Maintenance of Areas within East Village Redev & Ballpark Infrastructure	Aztec Landscaping, Inc	09/01/2008	\$98,893
6766-04-T	Janitorial Maintenance Service for City of San Diego Branch Libraries	Jani-King of California, Inc	01/31/2007	\$601,718
6793-05-A	Janitorial Maintenance at Various Police Facilities	Qualityway Building Maintenance, Inc	12/03/2005	\$289,304
6805-04-A	Janitorial Maintenance Service North City Water Reclamation Plant & Various Pump Stations	NMS Management, Inc	07/01/2008	\$95,771
6994-05-Y	Landscape Maintenance of Views West Neighborhood Park & Comfort Station	Aztec Landscaping, Inc	12/01/2006	\$84,030
7008-05-A	Janitorial Maintenance Service at Various Police Store Fronts	Tobi Jene Carter DBA	10/24/2006	\$46,162
7009-05-Y	Landscape Maintenance within Eastgate Technology MAD	Trugreen - Landcare Regional	01/01/2008	\$101,944
7017-05-Y	Landscape Maintenance of Areas within Imperial Marketplace adjacent to South Las Chollas Creek	Acacia Landscape Company	12/01/2006	\$48,301
7100-06-W	Uniform Service for Streets Division	Prudential Overall Supply	05/15/2006	\$37,944
7403-05-Y	Landscape Maintenance Spring Canyon Park & Dingeman School Field & Janitorial Maintenance	Acacia Landscape Company	07/01/2008	\$78,172
7404-05-Y	Landscape Maintenance Designated Areas within Torrey Hills MAD	Parkwest Landscape Maintenance	10/01/2008	\$732,260
7407-05-Y	Landscape Maintenance of Dusty Rhodes Neighborhood Park	Aztec Landscaping, Inc	07/01/2008	\$46,023
7417-05-Y	Landscape Maintenance of Carmel Valley Park and Comfort Station	Acacia Landscape Company	08/01/2006	\$110,825
7494-05-Y	Plants and Landscape Maintenance for Los Penasquitos Canyon Preserve Mitigation Project	Natures Image, Inc	07/15/2007	\$69,136
7657-06-Y	Landscape Maintenance Carmel Creek Neighborhood Park & Janitorial Maintenance	Acacia Landscape Company	10/15/2008	\$75,725
7661-06-Y	Tree Maintenance Service in the Scripps-Miramar Open Space District	One Tripp Tree Service	01/01/2007	\$411,747
7691-06-Y	Landscape Maintenance So Creek Neighbordh Park & Janitorial Maintenance 1 Comfort Sta	Aztec Landscaping, Inc	12/01/2007	\$39,063
7728-06-Y	Landscape Maintenance So Village Neighbordh Park & Janitorial Maintenance 1 Comfort Sta	Aztec Landscaping, Inc	01/01/2008	\$29,883

**Living Wage Ordinance Contracts in Fiscal Year 2008**  
(July 1, 2007 - June 30, 2008)

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start Date</u>	<u>Contract Amount</u>
7730-06-Y	Tree Maintenance Service Within the Stonecrest Village MAD	Atlas Environmental Svcs, Inc	12/01/2007	\$50,718
7737-06-Y	Landscape Maintenance of Various Metropolitan Wastewater (MWWWD) Facilities	Landscapes USA, Inc	02/28/2009	\$110,058
7763-06-A	Janitorial Maintenance Service at Civic Center & Gaslamp Square Park Comfort Stations	Tobi Jene Carter DBA	12/04/2006	\$324,886
7889-06-Y	Landscape Maintenance of Designated Areas within Gateway Ctr East MAD	Aztec Landscaping, Inc	02/01/2008	\$91,855
7899-06-Z	Parking Management Services for Qualcomm Stadium	Ace Parking Management, Inc	08/12/2006	\$7,681,013
7960-06-Y	Landscape Maintenance of Sabre Springs Neighborhood Park & Janitorial Maintenance	Aztec Landscaping, Inc	04/01/2008	\$43,165
7992-06-Y	Landscape Maintenance of Designated Areas within First San Diego River Improv Project	Blue Skies Landscape Maintenance Inc	03/01/2008	\$109,971
8117-06-Y	Landscape Maintenance of Designated Areas within Mid-City MAD	Aztec Landscaping, Inc	06/12/2007	\$88,515
8121-06-Y	Landscape Maintenance of 4 Parks (Emerald Hills, Marie Widman, Gompers, & Kensington)	Aztec Landscaping, Inc	06/28/2007	\$39,642
8125-06-Y	Landscape Maintenance of Solana Highlands Neighborhood Park	Westturf Landscape Maintenance	06/04/2010	\$39,685
8127-06-Y	Landscape Maintenance Mountain Ranch Community Park	Acacia Landscape Company	06/01/2008	\$72,287
8259-06-Y	Landscape Maintenance of Designated Areas within Pacific Highlands Ranch MAD	Acacia Landscape Company	08/02/2008	\$53,576
8301-06-Y	Landscape Maintenance Sage Canyon and Torrey Hills Parks & Janitorial Maintenance	Acacia Landscape Company	09/01/2008	\$112,185
8328-07-A	Lead and Asbestos Abatement Services	TEG-LVI Environmental Svcs Inc.	12/14/2007	\$495,378
8328-07-A	Lead and Asbestos Abatement Services	Flores Sierra Contractors, Inc	12/14/2007	\$500,858
8336-07-B	Pest Control for Park & Rec Developed Regional Parks	Agricultural Pest Control	12/12/2007	\$39,430
8348-07-G	Janitorial Maintenance Service at Filtration/ Water Plants, Environ Monitoring & Tech Svc Lab	T and T Janitorial	01/01/2009	\$176,426
8349-07-A	Janitorial Maintenance Service at Metropolitan Operation Center (MOC)	Harrison Organization, Inc	01/02/2007	\$347,825
8351-06-Y	Landscape Maintenance within Carmel Valley Neighborhood 10 MAD	Benchmark Landscape Services Inc	12/01/2006	\$146,820
8398-07-Y	Landscape Maintenance of Designated Areas within Otay International Center MAD	Aztec Landscaping, Inc	12/01/2006	\$149,059
8421-07-Y	Landscape Maintenance Designated Areas within Carmel Valley MAD	Landscapes USA, Inc	01/02/2007	\$266,761

**Living Wage Ordinance Contracts in Fiscal Year 2008**  
(July 1, 2007 - June 30, 2008)

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start Date</u>	<u>Contract Amount</u>
8432-07-G	Janitorial Services for Events & Post-Events at Qualcomm Stadium	Jani-King of California, Inc	02/12/2007	\$770,988
8433-07-G	Janitorial Maintenance Services for Central Library	TTCC, Inc DBA	02/02/2007	\$176,202
8494-07-Y	Landscape Maintenance of Designated Areas within Scripps Miramar Ranch MAD	Landscapes USA, Inc	03/15/2007	\$387,143
8502-07-W	Security Guard Services at Various City Sites	The Wackenhut Corp	09/14/2007	\$3,172,116
8558-07-B	Security Guard Services at Metropolitan Operations Center	Able Patrol and Guard	06/30/2008	\$139,810
8580-07-Y	Landscape Maintenance at Various Water Facility Sites	Aztec Landscaping, Inc	07/01/2007	\$29,320
8600-07-W	Uniform Services for Various City Sites	Ameripride Uniform Services	07/01/2007	\$238,573
8609-07-Y	Landscape Maintenance of Designated Areas within Stonecrest Village MAD	Contemporary Design Landscape	06/01/2007	\$228,301
8622-07-Y	Landscape Maintenance at Various Metropolitan Wastewater Operations Sites	Blue Skies Landscape Maintenance Inc	06/01/2007	\$50,673
8648-07-Y	Tree Maintenance Services within City-Wide Open Space Areas & Tierrasanta MAD	Atlas Environmental Services	07/01/2007	\$406,325
8649-07-Y	Tree Removal, Stump Grinding, & Backfilling Services	West Coast Arborists, Inc	06/01/2007	\$77,717
8694-07-Y	Landscape Maintenance within Gas Tax TransNet Program	Aztec Landscaping, Inc	07/01/2007	\$480,285
8730-07-B	Security Gate Service at Black Mountain & San Pasqual Parks	Able Patrol and Guard	06/01/2007	\$28,766
8758-07-Q	Landscape Maintenance of Designated Areas Hillcrest, North Park, Mid City & Talmadge MAD	Aztec Landscaping, Inc	08/15/2007	\$237,089
8781-07-Y	Mowing & Grounds Maintenance at Montgomery & Brown Fields	Powerland Equipment, Inc	10/01/2007	\$109,487
8797-07-Q	Landscape Maintenance of Designated Areas within City Heights Urban Village	Acacia Landscape Company	07/01/2007	\$124,681
8837-07-Q	Maintenance of Designated Areas, Fire Station #24, within Carmel Valley MAD	Aztec Landscaping, Inc	09/15/2007	\$525,752
8851-07-Q	Landscape Maintenance within Northwest Otay Zone 2 MAD	Westturf Landscape Maintenance	07/01/2007	\$43,144
8871-07-Q	Landscape Maintenance of Designated Areas within Genesee Av/North Torrey Pines MAD	Benchmark Landscape Services Inc	08/15/2007	\$68,247
8881-07-B	Security Guard Service at Central Operations Facilities	Able Patrol and Guard	10/01/2007	\$231,735
8893-07-B	Security Guard Service at Brown Field and Montgomery Airport	Able Patrol and Guard	09/07/2007	\$122,197

**Living Wage Ordinance Contracts in Fiscal Year 2008**  
**(July 1, 2007 - June 30, 2008)**

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start Date</u>	<u>Contract Amount</u>
8901-07-Q	Landscape Maintenance of Designated Areas within Mira Mesa Northeast Sub-Area MAD	Brewer Lawn Maintenance, Inc	11/01/2007	\$347,541
9004-08-B	Security Guard Services Fire Training Facility	Able Patrol and Guard	10/22/2007	\$109,770
9023-08-W	Uniform Services for Various City Sites	Unifirst Corporation	09/20/2007	\$111,475
9056-08-Q	Tree Trimming/Root Pruning/Tree Planting/Root Barrier Installation	West Coast Arborists, Inc	12/15/2007	\$149,800
9057-08-Q	Landscape Maintenance of Designated Planted and Paved Center Islands in Sabre Springs MAD	Aztec Landscaping, Inc	01/01/2008	\$55,320
9093-08-Q	Landscape Maintenance Of Designated Areas within Tierrasanta MAD	Treebeard Landscape, Inc	05/01/2008	\$475,403
9144-08-Q	Landscape Maintenance of Various Library Sites	Ponderosa Landscape, Inc	06/01/2008	\$326,450
9185-08-Q	Landscape Maintenance of Areas within Calle Cristobal MAD	Brewer Lawn Maintenance, Inc	07/01/2008	\$137,949
9186-08-Q	Landscape Maintenance of Medians, Bike & Equestrian Trails within Carmel Valley CVREP	Brewer Lawn Maintenance, Inc	06/01/2008	\$38,623
9216-08-Q	Tree Trimming/Tree Planting for Approximately 5,000 Trees	West Coast Arborists, Inc	04/15/2008	\$267,000
9260-08-B	Inspection & Cleaning of Catch Basin, Cleanout & Curb Inlet	Ron's Maintenance	05/01/2008	\$336,000
9289-08-B	Pest Control at City Buildings, Pigeon and Skunk Trapping at Qualcomm	Stafford Environmental Services Inc	07/01/2008	\$31,849
9331-08-B	Security Guard Services at Various City Sites	Able Patrol and Guard	08/01/2008	\$952,843
	97 CONTRACTS	40 CONTRACTORS		\$29,640,142



Report to Budget and Finance Committee

## ***Living Wage Ordinance FY 2008 Annual Report***



Hildred Pepper, Director  
Purchasing & Contracting Department

March 11, 2009



### ***Background***

<b>April 12, 2005</b>	<b>LWO passed by Council</b>
<b>July 1, 2006</b>	<b>LWO became effective</b>
<b>October 10, 2007</b>	<b>First <i>LWO Annual Report</i></b>
<b>October 20, 2008</b>	<b>LWO modified by Council</b>

NOTE: This report reflects LWO requirements  
in effect during Fiscal Year 2008  
[SDMC §22.4235(c)]





## ***Employer Requirements***

**On applicable service contracts, employers must:**

- **Pay covered employees:**  
\$10.34 + \$2.07 for health benefits (during FY 2008)
- **Provide days off:**  
10 paid and 10 additional unpaid (per year)
- **Submit: *Certification of Compliance***
- **Post: *LWO Notice to Employees***



## ***Employer Exemptions***

**Exemptions approved by Purchasing Agent if:**

- **Business employs 12 or fewer employees**  
including parent and subsidiaries
- **Business is 501(c)(3) non-profit**  
and highest pay is less than 8x lowest pay
- **Collective bargaining agreement**  
specifically supersedes LWO

In FY 2008, 4 contractors were exempt





## LWO Contracts

LWO contract metrics since inception of Ordinance:

Metric	Fiscal Year 2007	Fiscal Year 2008
Total LWO Contracts	109	97
Total LWO Contractors	52	40
Total LWO Contract Value *	N/A	\$29,640,142

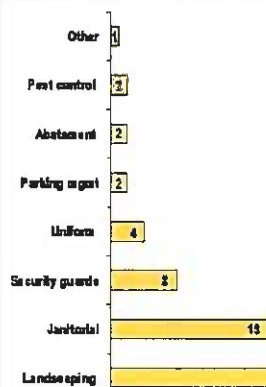
\* Contract term may span portions of several years

FY 2007 details in Attachment B of Report 07-114  
FY 2008 details in Attachment D of Report 09-007

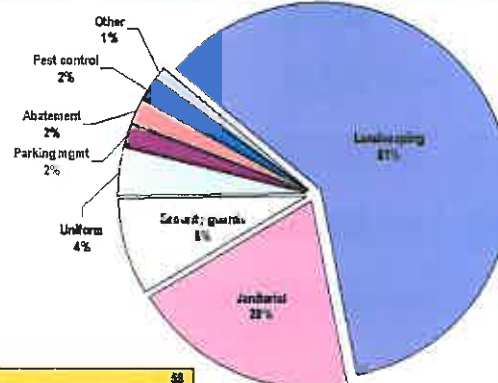


## Chart 3: Number of Contracts

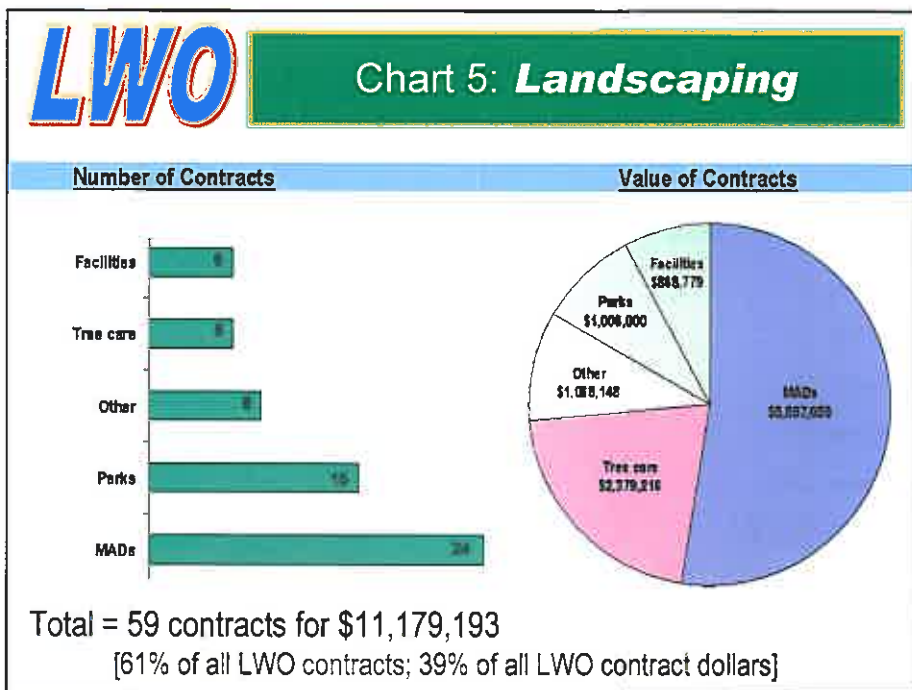
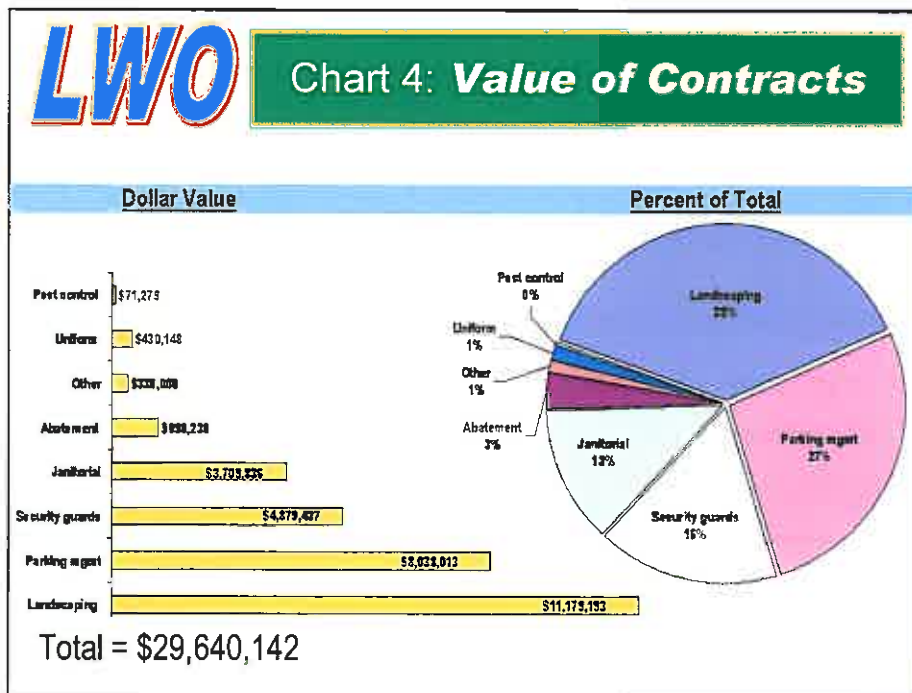
Number of Contracts



Percent of Contracts



Total = 97 Contracts





### Chart 6: **LWO Rates**

Comparison of LWO rates since implementation of Ordinance:

	<u>Effective Dates</u>	<u>Cash Wage + Health Benefits</u>	<u>Full Cash Wage</u>
FY 2009	July 1, 2008 – June 30, 2009	\$10.58 + \$2.12 per hour in Health Benefits	\$12.70 per hour
FY 2008*	July 1, 2007 – June 30, 2008	\$10.34 + \$2.07 per hour in Health Benefits	\$12.41 per hour
FY 2007	July 1, 2006 – June 30, 2007	\$10.00 + \$2.00 per hour in Health Benefits	\$12.00 per hour

\* Fiscal Year 2008 is the subject of this report.



### Chart 7: **Various Wages**

Comparison of annual earnings for various wage rates:

<u>Type of Wages</u>	<u>Fiscal Year 2007</u>	<u>Fiscal Year 2008</u>
Minimum wage	@ \$ 7.50/hr = \$15,600	@ \$ 8.00/hr = \$16,640
Living Wage with paid health benefits	@ \$10.00/hr = \$20,800	@ \$10.34/hr = \$21,507
Living Wage in full cash payment	@ \$12.00/hr = \$24,960	@ \$12.41/hr = \$25,813

NOTE: Assumes 40 hours of work for 52 weeks





## Chart 8: **Employee Complaints**

City received and resolved 7 LWO employee complaints:

Employee Complaint		Resolution
#C08-001	Non-payment of LWO rates.	<b>Violation.</b> Court awarded \$45,500 to employees.
#C08-002	Wanted cash instead of insurance.	<b>No violation.</b> Employer determines cash or insurance.
#C08-003	Non-payment of LWO rates.	<b>No violation.</b> CBA superseded LWO.
#C08-004	Non-payment of LWO rates.	<b>No violation.</b> CBA superseded LWO.
#C08-005	Retaliation for request of LWO rates.	<b>Violation.</b> Employee re-instated and paid \$4,914.36.
#C08-006	Non-payment of LWO rates.	<b>No violation.</b> CBA superseded LWO.
#C08-007	Non-payment of LWO rates.	<b>Violation.</b> Employee paid \$2,426.85 in back wages.

Complaint resolution time = 45 days average  
when legal representation not involved



## **Additional Information**

- **1.0 FTE added to LWO administration during FY 2009**
- **Employee forms in English and Spanish**
- **Compliance Reviews (audits) underway**
- **Liaison with City Facility operators:**
  - Petco Park • Sports Arena • Concourse
  - Convention Center • Qualcomm Stadium
- **In FY 2009, LWO became applicable to childcare**
- **In January 2010, recent modifications apply**

